S. HRG. 98-161

UNION VIOLENCE AND THE HOBBS ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON SEPARATION OF POWERS

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 462

A BILL TO AMEND THE HOBBS ACT

MARCH 23, 1983

Serial No. J-98-22

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

19-593 O WASHINGTON : 1983

S521-59

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UNION VIOLENCE AND THE HOBBS ACT

WEDNESDAY, MARCH 23, 1983

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON SEPARATION OF POWERS,
Washington, D.C.

The subcommittee met, pursuant to notice, in room SD-226, Dirksen Senate Office Building, commencing at 10:40 a.m., Hon. John P. East (chairman of the subcommittee) presiding.

Staff present: Carolyn Osolinik, Kathy Zebrowski, Meri Amidon, Thomas A. Bovard, Debbie Bernstein, James M. Sullivan, March Bell, Linda Nersesian, Elizabeth Greenwood, Carolyn Blomdahl, Maura Whelan, and Alan Gore.

OPENING STATEMENT OF SENATOR JOHN P. EAST

Senator EAST. I would like to convene this hearing of the Subcommittee on Separation of Powers regarding S. 462, a bill to amend the Hobbs Act. I welcome our witnesses this morning and also others who have an interest in this matter.

As I just mentioned, this hearing pertains to S. 462, which is a bill that will attempt to clear up in terms of congressional purposes the intention of Congress under the Hobbs Act of 1946. The Supreme Court in 1973 in the *Enmons* decision had held that the Hobbs Act did not cover violence in interstate commerce when "in pursuit of legitimate labor objectives."

[Bill S. 462 follows:]

[S. 462, 98th Congress, 1st session]

A BILL To amend section 1951 of title 18 of the United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1951 of title 18 of the United States Code is amended as follows:

(a) Subsection (b)(2) is amended to read as follows:

"(2) The term 'extortion' means the obtaining of property from another, with his or her consent, induced by use of actual or threatened force, violence, or fear thereof, or wrongful use of fear not involving force or violence, or under color of official right.".

(b) Subsection (c) is amended to read as follows:

"(c) Nothing in this section shall be construed as indicating an intent on the part of the Congress—

"(1) to repeal, modify, or affect section 17, of title 15, sections 52, 101-115, and 151-166 of title 29, or sections 151-188 of title 45; or

"(2) to exclude Federal jurisdiction over the offenses defined in this section on the ground that the conduct is also a violation of State or local law, or that the conduct, if it involves force, violence or fear thereof, takes place in the course of a legitimate business or labor dispute or in pursuit of a legitimate business or labor objective.".

(c) A new subsection (d) is added to read as follows:

"(d) It is an affirmative defense to a prosecution under this section that the defendant's conduct—

"(1) was incidental to peaceful picketing in the course of a legitimate labor dispute, as defined in section 2(9) of the National Labor Relations Act, as amended (29 U.S.C. 152(9)); and

"(2) consisted solely of minor bodily injury, or minor damage to property not exceeding a value of $2,500, or a threat of such minor injury or damage; or

"(3) was not intended to extort property.".

Senator EAST. There are many who feel that the purpose of the Hobbs Act and earlier legislation was clearly to deal with all forms of violence, extortion, related crime involving interstate commerce. The power of Congress involved here, article 1, section 8, is the power to deal with interstate commerce.

I will not argue the relative merits of the *Enmons* decision except to say that the Supreme Court held they did not interpret the Hobbs Act of 1946 as including violence in "pursuit of legitimate labor objectives." Those supporting S. 462 would like to close that loophole. I do not wish to overstate or understate the problem, but at least in those brief words that is the essence of the problem.

I would like to make a few other very preliminary remarks. Those opposing this measure, the minority side, have been invited to have witnesses this morning. However, they have foregone doing so, although that does not mean that there is no opposition to the bill. We have some statements this morning that will be made a part of the record by those people in opposition, and I would like to indicate that we will keep the record open for those who would like to enter statements in opposition to S. 462, or those who would like to enter statements in favor of it.

Our witnesses this morning appear in support of S. 462. We have five different panels and I welcome them all. I would like to caution all participants of the enormous time constraints under which we are operating. The Senate is voting today, which is bound to turn this hearing into something less than a nice, even production. Therefore, I would encourage all witnesses to be as succinct as they can. All witness statements will be made a part of the record. If witnesses must read, please make it selective and limited.

I shall probably reach a point where I will have to be arbitrary in terms of time, otherwise things will spin out of control, and those who come first will eat up all the time, and those who come later may not even get on the agenda. I do not wish to be pessimistic in terms of time but I am an enormous realist around here. When the Senate starts voting it is pure chaos as far as trying to have hearings and votes. I have not yet mastered the art of being two places at once, and generally I have not run across anybody who has.

This morning I would like to present as our first witness a very distinguished colleague of mine, Senator Charles E. Grassley, U.S. Senator from Iowa, who is the key sponsor of S. 462. He comes to speak on behalf of the bill. I would like to hear his statement and would also like to invite Senator Grassley, if he is so disposed after his statement to join me up here and to participate in the discussion.

Senator Grassley, I appreciate your coming, and thank you for your punctuality.

Senator Grassley.

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Well, thank you, first of all, Mr. Chairman, for your diligence in scheduling this hearing so early in this session.

The bill that you mentioned, S. 462, and that is the one before us, has a rapidly growing list of cosponsors which include at this point Senator Thurmond, the chairman of the Committee on the Judiciary; Senator Dole, chairman of the Finance Committee; Senator Simpson, chairman of the Immigration Subcommittee; Senator Goldwater, chairman of the Select Committee on Intelligence; Senator Jepsen, chairman of a very important Armed Services subcommittee; Senator Trible; Senator Nickles, chairman of the Subcommittee on Labor; and Senator Helms, chairman of the Committee on Agriculture, Nutrition, and Forestry.

This legislation, which I introduced on February 3, amends the Federal extortion and robbery statute, commonly referred to as the Hobbs Act, which is found at section 1951 of title 18 United States Code. The enactment of this legislation would leave no doubt as to the congressional intent in enacting the Hobbs Act in the first place, back in the middle 1940's. We will punish, through this legislation, the actual or threatened use of force or violence regardless of the objective, regardless of the perpetrator's claim to such property.

Until the Supreme Court's 1973 *Enmons* decision, no person or group was exempted from the coverage of this statute. Any actual or threatened use of violence, or force to obtain property was wrongful.

The objective that was sought through the violence was irrelevant; resorting to violence was just simply not condoned as a means of settling a dispute.

BACKGROUND OF *ENMONS* CASE

Now, the *Enmons* case arose out of a strike by the employees of the utility company seeking a new collective bargaining agreement. Five specific acts of violence were charged, including the firing of high-powered rifles at three transformers, the draining of oil from a transformer and the blowing up of a transformer installation. The Government contended that the statutory language unambiguously and without qualification proscribed interference with commerce by extortion; that in terms of the statute, extortion included the obtaining of property from another by threat or violence; that wages were the property of the employer, and that violence in the course of a strike to obtain such property fell within the literal language of the Hobbs Act.

Nevertheless, five members of the Supreme Court did not agree with that point of view and they held that violence during a strike to achieve legitimate collective-bargaining objectives was not intended by Congress to be covered by the Hobbs Act. The majority of 5 to 4 emphasized that a broader interpretation of the statute would apply its coverage to, "the worker who threw a punch on the picket line or the striker who deflated the tires of his employer's truck." That is what the Supreme Court said. I want to emphasize

to you that this legislation does not involve those specific acts on a picket line. I emphasize here today that my legislation specifically exempts minor incidental incursions. It is an affirmative defense to a prosecution under this bill, if the defendant's conduct consisted solely of minor bodily injury or minor damage to property not exceeding $2,500.

By continuing to adhere to the decision in *Enmons,* we are in effect bolstering the concept that the end, pursuit of legitimate collective bargaining objectives, justifies the means used, any means, whether that involves systematic destruction of property, maiming or killing. We have the opportunity then, through the enactment of S. 462, to mandate, to decree, that no exhortive violence by either party, and I want to emphasize, by either party, management or labor, involved with a labor dispute will be exempt from the coverage of the Hobbs Act.

LABOR BACKGROUND

Let me say parenthetically and aside from my printed testimony, I do not come to this discussion of violence at a picket line or labor management relations from the side of the point of view of management. Let me explain to you, Mr. Chairman, to anybody else who might be interested, might be concerned about what Chuck Grassley is really all about.

From 1961 to 1971 I was a member of the International Association of Machinists. I was a production worker at the Waterloo Registered Corp. in Cedar Falls, Iowa, a sheet metal industry that made air diffusion equipment such as furnace registers, and so forth. And in 1968 or 1969, I forget just exactly when it was, maybe it was even 1970, I cast a vote as a member of my union to go on strike because I felt it was and is a legitimate way of achieving collective-bargaining arrangements. Now, there was no violence at all in that union or in that strike or even in that union. We were a locally controlled union. We did not have anybody outside telling us how to make our decisions. The majority of us made a decision to strike. Even though there were no incidents that this bill would take care of in that particular point of reference that I give you, involving me personally, I want to say that I introduced this legislation as a person who believes in the principles of collective bargaining, believes that those principles ought to be achieved free of violence, that there ought to be open discussion and a rational approach to a decision where the majority of the union agrees on one hand and with the management on the other, that a decision ought to be consummated. We did reach an agreement in that incident.

I went on to work there for 2 or 3 more years before the plant closed as a result of the economics of the industry. I have not been a member of the union since but I believe in the right of collective bargaining; nevertheless I believe that it must be done peacefully and I believe that those ends can best be achieved by the Hobbs Act as it was passed in 1946, interpreted so that it treats both labor and management equal.

Senator EAST. Senator, I thank you. I would like to ask you one question.

I think your statement was an excellent one. Certainly from my personal standpoint, I think it places this matter in its proper perspective in a very concise way. Correct me if I am wrong, but to make sure that I understand it as a part of the record here, what you are saying is that the Hobbs Act was designed to cover all forms of violence arising out of interstate activity, whether they be by management, labor or anyone else; this is not strictly a matter of labor versus management or something of that kind. There was an intent on the part of Congress in the Hobbs Act to deal with all forms of violence arising out of or utilizing interstate commerce, hence the commerce laws. The purpose of this hearing is to try to, as I would say, close a loophole found in the *Enmons* decision, namely because that decision did not cover violence when in pursuit of so-called legitimate labor objectives.

Is that an accurate summary of what you are saying?

Senator GRASSLEY. Absolutely, and I think we could make an entire record to support your contention, based on the debate that took place in the Congress in the middle of the decade of the 1940's when this legislation was passed.

Senator EAST. You were feeling that this explanation would be a fair reading of the Hobbs Act. However, we are confronted with the reality of the *Enmons* decision and whatever the relative merits of that decision from the standpoint of the majority of the Court, you are saying it was not the intent of the Congress in the Hobbs Act. You do not feel that is the current intent of the Congress and, in terms of *Enmons,* we would be in a position to modify that decision.

Senator GRASSLEY. That is right. And just to demonstrate how I have a history of promoting legislation to make collective bargaining work fair to both labor and management, in the middle 1960's when I was a member of the Iowa Legislature, I sponsored and voted for legislation that made it illegal to import strikebreakers into the State of Iowa, professional strikebreakers I should say, into the State of Iowa. And we amended Iowa's right-to-work law. That was the very same time that I was helping to form an organization called Iowans for the Right to Work, which still exists, which still lobbies before the Iowa Legislature, which still promotes the cause of right-to-work legislation in the State.

Senator EAST. Thank you, Senator. That was the principal question I wanted to ask of you. Again, I thank you for coming and if you would like to join me, I know you will certainly feel free to do so, not only as a distinguished colleague but also as a member of the Committee on the Judiciary of which this subcommittee is a part.

I would like to let the record show that Senator Denton, who is a member of this subcommittee, has a statement he would like to enter into the record. He has indicated to me his regrets that he cannot be here today. He does support S. 462 as introduced by Senator Grassley and would like to be added as a cosponsor.

Senator GRASSLEY. Who is that?

Senator EAST. Senator Denton would like to be added as a cosponsor to that legislation. A written memo from him to me has so indicated.

Therefore, I would like to make it clear that his written statement will be a part of the record.

[Senator Denton's statement follows:]

PREPARED STATEMENT OF SENATOR JEREMIAH DENTON

Mr. Chairman, I would like to express my sincere gratitude to those witnesses who are testifying today about a much needed amendment to the Hobbs Act, which would right several wrongs in Federal criminal law.

First of all, this bill presently before the committee would overrule the mistaken 1973 Supreme Court decision in *United States* v. *Enmons*, 410, U.S. 396.

That decision held that the Hobbs Act does not prohibit violent activities such as extortion by union officials during a labor dispute. The unreasonableness of allowing extortion to achieve "legitimacy" (and I use the word legitimacy in quotes) is so obvious that the effect of the *Enmons* decision has been rightly characterized as "legalized violence."

Second, the bill introduced by my distinguished colleague and friend, Senator Grassley, would make possible prosecutions of those involved in violent, extortionate labor union tactics. I would like to point out that only three weeks ago, we had testimony in the Judiciary Committee that outlaw motorcycle gang members, such as the Hell's Angels, are hired by unions to terrorize other workers. I deplore such tactics. The immorality and disrespect for life which such behavior represents must not be permitted to continue. And, I will pledge my support for legislation which promotes convictions of those involved.

Third, let us not forget that union violence is violence in the workplace, violence against American citizens who, by the sweat of their brow, are providing for their families. Recession and unemployment are difficult stresses on our nation's families. We need peaceful workplaces, not extortion and violence. We need teamwork and cooperation in the workplace, not a war zone created by hired hoodlums. I say again that the legislation considered today by this committee is of great importance and I personally thank those who are endeavoring to make the workplaces of our nation free from violence.

Senator EAST. Also, Congressman J. Kenneth Robinson, of Virginia, has indicated to me, although he cannot be here in person, that he would like his statement to be submitted into the record. We appreciate his submitting his statement and we shall, without objection, make it a part of the record.

[Statement of Representative Robinson follows:]

PREPARED STATEMENT OF REPRESENTATIVE J. KENNETH ROBINSON

I thank the chairman for this opportunity to express my support for legislation to revise the Supreme Court's interpretation of the Hobbs Act in the 1973 *Enmons* decision.

Five of the nine Justices ruled in *Enmons*, in effect, that union officials engaged in "legitimate" labor disputes need not fear prosecution for extortion under the Hobbs Act. As sponsor of H.R. 287 in the 98th Congress, and of H.R. 450 in the 97th Congress, I have sought to eliminate by statute this unique exemption carved out of the Hobbs Act by the Supreme Court.

My support for this legislation has its foundation in two bedrock American principles:

First, Government should place the highest of priorities on protecting equal justice under the law for all Americans. Second, our free society provides numerous legal alternatives to the use of force to settle labor-management disputes.

The *Enmons* case stemmed from a violent strike in Louisiana, during which union agents shot up and dynamited electrical transformers and substations. The Federal Government attempted to prosecute the perpetrators under the Hobbs Act.

The basic issue before the High Court was whether severe acts of violence during the course of that strike could be construed as extortion, since wages, the object of the strike, were the property of the employer. Union attorneys argued that enforcement of the Hobbs Act would curtail their legitimate objectives to strike for better wages and working conditions.

Until *Enmons*, no one questioned the purpose of the Hobbs Act. Enacted in 1946 to curb a rising tide of violent labor-management disputes, the Hobbs Act intended that taking another's property by force should be a crime, no matter what the objective. The overriding concern of Congress was to protect interstate commerce from violent labor-management disputes.

The Hobbs Act was designed to apply to all Americans. Congressman Samuel Hobbs, author of the bill, summed it up best with the words, "crime is crime, no matter who commits it; and that robbery is robbery, and extortion extortion, whether or not the perpetrator has a union card."

Thus, prior to *Enmons*, it was commonly held that any actual or threatened use of force or violence to obtain property was a "wrongful" use of force or violence and therefore constituted extortion.

It was considered irrelevant to the Hobbs Act that the person or group obtaining the property claimed legal or other rights to it. The law was believed to prohibit the disruption of interstate commerce through real or threatened force by any persons to resolve property disputes, including labor-management disputes over wages.

But in *Enmons* the Supreme Court sharply split from the intent of Congress and took the position, in effect, that the legitimacy of the ends sought by the union agents—namely, contract concessions—excused from prosecution under the Hobbs Act the use of wanton destruction as a means to force employers to accede to the demands. Thus, the Supreme Court's rationale in *Enmons* boiled down to an "end justifies the means" philosophy.

I want to make it perfectly clear that legislation to correct the *Enmons* decision would not interfere with the right of workers to strike for higher wages. However, strikes which go beyond the mere withholding of labor to shootings, dynamitings, and burnings against resisting employers and nonstriking workers constitutes extortion by any normal definition, and should be addressed by the Hobbs Act.

The apparent intent of the High Court in *Enmons* was to rely on State and local authorities for law enforcement when criminal union activity is involved. Strike-related crimes are punishable under numerous state and local laws, said the Court. Furthermore, the majority opinion claimed the Federal Government should not be in the business of policing strikes. It is ironic that the Court should suddenly become wary of preventing Federal involvement in labor violence, when Congress has seen fit to regulate most other aspects of private-sector labor-management relations.

Let it suffice to say the results of the Supreme Court's peculiar blind spot, or tortured legal semantics, with regard to labor violence have been disastrous.

The 1981 United Mine Workers Union strike in the eastern United States is a classic example. As sharpshooters and saboteurs ravaged the highways in the coal producing regions of Kentucky, Pennsylvania, West Virginia, and Virginia, outgunned, intimidated, or financially strained local law enforcement agencies often looked the other way in the face of well-orchestrated labor violence.

My home State of Virginia was forced to mobilize hundreds of state troopers to protect life and property on the highways, at immense cost to taxpayers.

No Federal help was available. Often, the perpetrators slipped easily across State lines to elude capture by State and local authorities. For instance, Kentucky State Police acknowledged that out-of-state "hit men" were responsible for much of the strike havoc wreaked upon their State.

Of course, there are other well documented cases of unpunished extortion caused by the High Court's exemption of union officials—and only union officials—from an anti-extortion law meant to apply to all Americans.

Most adversely affected by the Supreme Court-created loophole in the Hobbs Act protections are, of course, the overwhelming majority of American working men and women who ultimately pay the price of labor violence, either as consumers, or as actual victims.

Mr. Chairman, for the sake of equal justice under the law for all Americans, I pray my colleagues will act swiftly to enact the Hobbs Act Amendment currently before the Congress.

Senator EAST. Our next witness this morning is Mr. Reed Larson, president of the National Right to Work Committee. I welcome Mr. Larson this morning. We appreciate his taking the time from his demanding schedule to come and offer some thoughts that he has on this matter.

Mr. Larson, you may proceed, and, again, I would appreciate your doing the best you can to accommodate our severe time limitations.

STATEMENT OF REED LARSON, PRESIDENT, NATIONAL RIGHT TO WORK COMMITTEE

Mr. LARSON. Mr. Chairman, first I want to thank you very much for the opportunity to be here and present our views on this important subject and also for the fact that you have arranged to conduct the hearing on this subject which badly needs attention and which has not in the past received the attention that we believe it deserves.

I have submitted a statement for the record as you suggested, and in the interest of time will try to just make some summarizing remarks, add a little technical data that I think will be useful to the committee in its deliberations. Also I just want to recount some personal observations, personal experiences that are not part of the record.

First, I should make it clear that the National Right to Work Committee is a citizens' organization devoted exclusively to combating compulsory unionism. Our membership and board of directors is made up of a broad cross section of people, including many union members. Our board chairman is a longtime union member. Several members of the board are currently voluntary members of labor unions or have been voluntary members in the past. We are not antiunion but we believe that every individual should have the opportunity to decide whether or not the union is worth joining.

One element of compulsory unionism that is involved in the issue before us today is that of the use of force and violence against employees to compel them through these threats and personal attacks to join or support a union which they do not voluntarily support. This has been described, I think very aptly, as the "pick-handle closed shop" and that is just what it is. That is why it is so important that consideration be given to closing this union violence loophole that now exists in the Hobbs Antiextortion Act.

Before I go on, I want to say a word of appreciation to Senator Grassley for taking the leadership in this crusade, this very important endeavor. It is one that I know will bring some criticism to him from the officials of organized labor who object very strongly to any curtailment of the special privileges, powers, and immunities that they enjoy under the law. But it certainly is an effort to bring about equal application of the law to all citizens and it is not designed to single out any particular segment of our population.

PERSONAL EXPERIENCE WITH VIOLENCE

In connection with this question of the "pick-handle closed shop," I think it would be useful to the committee if I recount an experience that I had personally many years ago. It was almost 30 years ago when I was organizing the very first stages of a campaign to enact a right to work law in my native State of Kansas. One of the experiences I had then which left an indelible impression on me was an interview I had at the hospital bed of a cab driver by the name of Deering Crowe. Deering Crowe had been viciously beaten simply because he chose to try to earn a living for his family while union officials told him that he should be on strike. As a result of this beating and complications from it, this

was really his death bed. He died just a few days after I interviewed him.

Deering Crowe was the only person who lost his life due to that tragic strike, but there was a great deal of human suffering, property damage, cabs destroyed. This was in Wichita, Kans. Ultimately the cab company against which it was directed, against whose employees it was directed, capitulated to the union's demands. They were backed up to the brink of bankruptcy and they made an agreement with the Teamsters Union under which a check for $15,000 was placed in escrow at the Fourth National Bank of Wichita. According to the agreement that check would be paid over to the cab company when and if the cab company delivered a contract to the Teamsters Union in St. Louis providing that all cab drivers would be compelled to join and pay dues to Teamsters Union as a condition of employment.

Now, that check, incidentally, was signed by two Teamsters officials: Harold Gibbons and James R. Hoffa. Needless to say, the cab company complied; they delivered to the Teamsters—delivered the drivers to the Teamsters and the bank delivered the check to the cab company. That, in a nutshell, is a personal experience, but that in a nutshell illustrates I think more clearly than anything I know the way that force and violence is an instrument of oppression for employees and is used directly as an instrument of compulsory unionism. That account, incidentally, later became a part of the record in the McClellan investigation and that very check is part of the hearing record with Mr. Hoffa's signature on it.

Well, since those days in 1954 when I experienced that interview with Deering Crowe, I have been increasingly distressed that this problem seems to grow worse and not better, and that to a large extent lawmakers have not addressed themselves to the subject. That again is why I compliment so highly Senator Grassley and you, Senator East, for bringing this issue before the public and before the U.S. Senate.

About 8 years ago, in 1975, we at the National Right to Work Committee began to compile statistics on the extent of union violence, because this is something that has apparently not received any research treatment at all. We began to collect and have organized on a computer record all published accounts of union-related violence, I have prepared for you today and would like to submit for the record the results of that research from 1975 through the end of 1982.[1] I do not present this as a complete and comprehensive record. Certainly, we could not collect and find every published account of union-related violence, but as far as I know it is the only record that exists that does anything as a step in that direction. Even the published accounts of union violence, if we have been able to collect everyone of them that occurred, are still only the tip of the iceberg because so many of the victims of union threats and violence are intimidated into concealing that intimidation, that threat, and do not go to the authorities.

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[1] The compiled statistics in "Incidents of Union Violence Reported in Print and Broadcast Media Accounts: 1975–1983," submitted by the Right to Work Committee, is on file with the Subcommittee on Separation of Powers.

So I think this is something that we should consider and I am glad to submit it for the record. In order to make it a little bit more understandable and to show the trends that we see, I have a graph over here for the last 6 years of that study, 5 years—let me see, I think it goes back—I think the first year is 1976, and during that time it is all in the record I gave you there, we accounted for 3,350 reported acts of union-related violence.

But as you can see here, the trend line is generally up.

Now, there was a reduction in 1982 which was quite pronounced but it also is evident in 1980. This is part of the effect of an election year when, as most industrial relations specialists in industry would tell you, they see much, much less of the hired union agents. It is well known amongst industrial relations people that grievances and other contact from the union business agents are greatly, greatly reduced during the period for several months ahead of each Federal election. That of course is because of the assignment of so many of these people to political activity. But that, coupled with, I think, the attention that this issue has begun to get, is one of the reasons that we have seen a dip in 1982. But based on the record so far in 1983, I think, unfortunately, we are going to see it go right on up.

Now, there are some other charts. I have prepared—I think give you a little more insight into this because we hear so much from the defenders of the union violence loophole, that this legislation is really aimed at scuffles on the picket line which, of course, is totally false. Senator Grassley made that very clear. But in fact a large part of the reported cases of union violence do not even occur on the union picket line. As you can see there, those that are associated with picket lines constitute a little more than half, although there is certainly no justification for clubbing somebody over the head on a picket line or destroying an automobile or anything else. A picket line is not sacred or above the law.

But the point of this is that nonpicket line violence is in itself a very, very important problem and I think some of the later witnesses in the hearing today will help to illustrate that point.

ANALYSIS OF VIOLENCE

Now we have taken this one step further and have analyzed it on the basis of picket line violence where we divide between the property damage violence versus personal injury violence. It is not surprising that on the picket line a greater percentage of the incidents of violence involves personal injury. But when you move to that segment of the reported cases which are nonpicket line related, you will see that, not surprisingly, the percentage of those which involve property damage is much, much higher. This also gets into the area of the difficulties of law enforcement. The crimes of vandalism are among the very most difficult to solve. It is a sneak attack in the dark of night to firebomb a house or damage a car or somebody's equipment. This is the type of thing that is extremely difficult to deal with. So I submit this information, and it all can be derived from the computer records that are available. I am sure that there are other types of analyses that can be derived that you might find helpful.

Now, I just wanted to move quickly to underscore the point which Senator Grassley made. The history of Congress and the Supreme Court trying to deal with the problem of union violence, going back clear to the mid-1930's, has been one of Congress inability to get the Supreme Court to understand what the congressional intent is. That is what S. 462 will do, I think, in a very effective way that is not likely to be overturned as have Congress earlier efforts to deal with this problem.

Even when you go back to the passage of the Hobbs Act, the sponsor of the Hobbs Act himself, Representative Hobbs said on the House floor in supporting his bill, that he intended to show that a crime is a crime whether or not the perpetrator holds a union card.

So it seems to the laymen just crystal clear that that is what the Hobbs Act was all about. But five Justices of the Supreme Court did not see it that way. But one of the four dissenters was William O. Douglas and I think he summed up the commonsense point of view about what Congress intended in words that we could not improve upon, and here is what Justice Douglas said in dissenting to the *Enmons* decision:

> The Court today achieves by interpretation what those who were opposed to the Hobbs Act were unable to get Congress to do. The bill before us was considered and enacted by the 79th Congress; and as I read the debates, the opposition lost in the 79th Congress what they win today.

Justice Douglas goes on:

> The Court relies most heavily on the legislative history of a measure covering the same topic which was passed by the previous House but on which the Senate did not act. Two years later, the bill in its present form was enacted. It was a differently constituted House that debated it and the year was 1945 rather than 1943. So the most relevant legislative history, in my view, concerns the 79th Congress, not the 78th.

From Justice Douglas.

But that, I think underscores again why it is so important that a bill like Senator Grassley's bill which makes it crystal clear, which the Supreme Court cannot misinterpret, be considered and promptly passed in order to deal with this problem.

I just came into possession of a newspaper clipping a few days ago that I did not include in the statement but I think it deals with one of the issues raised by the opponents of closing the union violence loophole so well that I would like to read this into the record. We hear so much from those who are trying to preserve this loophole, who contend that the Federal Government should not enforce the antiextortion law evenly against everybody, that State law enforcement officials are able to take care of it where unions are concerned, but obviously not where anybody else is concerned.

Well, this in itself is a fallacious argument. But the problem of State law enforcement is underscored by a statute that is on the books in Montana which was quoted in the Billings Gazette less than 1 month ago. It bars the State of Montana, specifically bars the State highway patrol from performing any law enforcement in connection with the labor dispute. Here is the language of the statute:

> Highway patrolmen have no authority and are expressly forbidden to make arrests in labor disputes or to prevent violence in connection with strikes and may not

perform any duties whatsoever in connection with labor disputes or strikes or boycotts.

Now, that may be an unwritten law in many local jurisdictions but there it is written right out for everybody to see in the State of Montana.

Well, let me close, Senator, by expressing again my appreciation for the opportunity to appear here and for the fact that Senator Grassley has taken the leadership and you provided the forum to look into this issue. I think there is an opportunity here for this subcommittee and then the full committee and then the Senate to take a very important step forward, not only in dealing with a long neglected problem, that of union-related violence, but also of demonstrating that the laws of this land are written and enforced to apply equally to every citizen and that nobody is above the law.

Thank you very much. If you have any questions.

Senator EAST. Thank you, Mr. Larson. Your materials will be made a part of the record.

I would just like to state what strikes me as the salient points you are making. One, it appears to me you are agreeing with Senator Grassley that the Supreme Court in the *Enmons* decision did not accurately understand that the intent of Congress was to deal with all forms of violence. Hence, there was a need for an act of Congress. This proposed bill would seek to close that loophole, close it in the sense of verifying the intent of Congress, since the *Enmons* decision is obviously requiring us to do so.

Second, through the materials that you have presented here, we can see that this is a fairly serious and legitimate problem. That is, it is not just merely an interesting legal problem, although obviously that is a key dimension of it, but in fact there is a genuine need. There is a fair amount of violence, extortion or general criminal activity that is present today in the United States and it is availing itself in terms of at least Federal law enforcement.

I think it is rather clear that I gather this is what you are saying, is that correct?

Mr. LARSON. That is correct. You summarize it well. I have nothing to add to that.

I have one point in connection with the first point that you summarized, the difficulty that the Supreme Court faces apparently. You have called one of the top legal experts on this subject I think as a witness. So it would be presumptuous for me to comment from a strictly legal point of view but, as a layman, it appears that the problem that has caused the Supreme Court to override what I believe was congressional intent, at least twice on this issue, is that our Federal labor law gives consciously to union officials and union organizers such a broad array of special privileges, monopoly powers and legal immunities, in order to make them successful in their organizing activities, that it is national policy. It is the policy of this country since 1935 to confer a broad array of privileges and powers on union organizers in order to insure that they are successful in bringing employees to the unions. I think this is where the Supreme Court sees a conflict between efforts to regulate violence for that, which has already been determined by Congress as a worthwhile end to regulate that violence on the one hand versus

retaining the special privileges and powers that Congress intended to accord to officials of organized labor.

Senator EAST. Thank you, Mr. Larson. For the sake of time, I shall defer to Senator Grassley and let him ask any question that he might have.

Senator GRASSLEY. I only have one that I am going to ask now because of time. But I do have several questions, maybe as many as eight or nine that I will submit to you in writing, that I would like your response to. But I do want your comments right now on the last sentence of a very short statement that has been filed with the committee by Ray Dennison, director of legislation for the AFL-CIO. This last statement says:

> The AFL-CIO has previously produced statements of local law enforcement authorities which show that the Right to Work Committee's "horror stories" are either brazen misrepresentations of the facts or manufactured of whole cloth.

That is the end of their statement.

I would like to have your comments on that because I assume that refers to this documentation that you have just given us?

Mr. LARSON. Well, I doubt—I do not really know. This documentation is really a compilation of published accounts of violence. We have not really commented on it.

I think what he is referring to is the serious effort that union officials made to counteract testimony that we presented at an earlier hearing on this subject. I might add, it was a hearing conducted by another Member of the Senate who refused to let any of the victims themselves appear and tell their stories. To Senator East's credit, he has corrected that injustice and today will hear from the people who are really affected.

Now, it is the people against whom this union-related violence was perpetrated had they been permitted to appear before that committee, I think those questions would have all been answered then. But the interesting thing about those so-called affidavits or statements that they used to refute the contention by some damaged employees that there had not been adequate law enforcement come from I believe he said local law enforcement officials that said that what we presented was not accurate. I believe this is the way you read it.

Senator GRASSLEY. Yes.

Mr. LARSON. Those local law enforcement officials are the people who failed to do their job and who let the union criminals get away with this violence and naturally those public officials are in collusion with the union officials and they have got to tell the same story. That is really the problem.

Senator GRASSLEY. Thank you, Mr. Chairman.

Senator EAST. Thank you, Senator.

Mr. Larson, I appreciate your coming.

Mr. LARSON. Thank you very much, Senator. It is a pleasure to be here.

[Statement submitted by Mr. Larson follows:]

Prepared Statement of Reed Larson

Mr. Chairman, members of the Committee, my name is Reed Larson, President of the National Right to Work Committee. The National Right to Work Committee is a single-purpose citizens' organization made up of more than one and one-half million Americans who oppose compulsory unionism.

Our organization's concern with compulsory unionism extends not only to the contractual form in which an employer agrees to fire an employee who declines to pay dues to an unwanted union, but also to the imposition of unwanted union membership through the concerted used of violence or threats of violence.

The latter has been aptly described as the "pick-handle closed shop." But that, of course, is the subject to which we address ourselves today in connection with S. 462 and the efforts to achieve equal application of the Hobbs Anti-Extortion Act to every citizen.

Legislation to amend the Hobbs Act has been introduced to correct an obvious misinterpretation of the Act by the U.S. Supreme Court in the 1973 decision of The United States v. Enmons. The Enmons decision created a special loophole for the officials of organized labor, exempting them from application of the Act.

Over many years, the Supreme Court has had great difficulty in discerning the intent of Congress when it comes to dealing with the problem of union violence. While repeated attempts by Congress to restrain the use of violence by union officials to obtain their objectives seem to many laymen to indicate a clear Congressional intent, the Supreme Court has seen it differently.

Justice William O. Douglas -- one of the four dissenters in the Enmons decision -- summed up the common sense view of

what Congress intended in his opinion: "the Court today achieves by interpretation what those who were opposed to the Hobbs Act were unable to get Congress to do. The bill before us was considered and enacted by the 79th Congress; and as I read the debates, the opposition lost in the 79th Congress what they win today."

"The Court relies mostly on the legislative history of a measure covering the same topic which was passed by the previous House but on which the Senate did not act. Two years later, the bill in its present form was enacted. It was a differently constituted House that debated it, and the year was 1945 rather than 1943. So the most relevant legislative history, in my view, concerns the 79th Congress not the 78th."

Consideration of S. 462 gives the 98th Congress an opportunity to clear up, once and for all, any doubt about whether it believes union officials should be above the laws which govern all other Americans.

Bolstering Justice Douglas' view is the fact that Congress specifically excluded the "employer-employee clause" which had been part of the earlier Anti-Racketeering Act of 1934, "the legislative history makes it clear that the new Act was meant to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship."

The intent of the legislation before the Committee today is to simply restate and place in force, once again, Congressional intent as defined by the original sponsor of the Hobbs Act, Congressman Samuel Hobbs of Alabama, that, "crime is crime no matter who commits it; and that robbery is robbery, and extortion, extortion, whether or not the perpetrator has a union card."

There are thousands of reasons for enacting S. 462 and closing the union officials' loophole in current law. These

are the thousands of working people and businessmen who have been victimized by union officials. They are the people who have felt the terrible, real-life effects of the 5-4 decision in Enmons.

Were it possible for every member of Congress to speak directly with the victims of compulsory unionism violence, there would be no need to explain other points in support of S. 462. The legislation would be swiftly enacted.

However, since this is not possible, I feel it is important to state three primary reasons why the National Right to Work Committee believes it is imperative that S. 462 be enacted, and the special exemption union officials currently enjoy from prosecution under the Hobbs Act be eliminated.

First, the sheer magnitude of union-inspired violence in America today dictates prompt effective federal action.

The Government has no higher purpose than the protection of its citizens from violence. The very fabric of a free society is threatened when Government fails in its primary goal; the prevention of coercion and violence.

It is sadly clear, Mr. Chairman, that in regard to union violence, Government has failed in its purpose.

Since 1975, public records reveal the occurrence of over 3,350 separate cases of union-inspired violence; violence against both employers and individual workers.

What's even more frightening than the aggregate figure is the marked increase over time in the number of incidents that occur annually.

But most frightening of all is the knowledge that the more than the 3,350 reported cases represent nothing more than a small fraction of the total number of incidents of union violence. Those courageous men and women who report the union coercion and violence to the authorities are the exception, not the rule. The exercise of unchecked union terrorism insures

that the overwhelming majority of its victims dare not challenge or report the intimidating tactics of organized labor.

I have enclosed with this testimony, a computer print-out detailing the public record of compulsory unionism violence since 1975. These tragic statistics speak for themselves.

What the computer print-out cannot tell the members of this Committee, or of this Congress, is the destruction of lives and businesses, the terror felt by individuals merely trying to earn a living, and the savage nature of organized violence used in a coordinated fashion, all designed to gain economic benefit for the hierarchy of organized labor.

I believe it's highly significant that union officials don't deny the violence that is sweeping across America; but rather, try desperately to characterize it as "minor" or "spontaneous." Some officials don't even paint a facade; they state the obvious very clearly. For example, one unnamed Teamster union official quoted in Business Week, summed it with admirable candor when he said, "we (the Teamsters) got where we are today by being the meanest SOB's on the block."

In neither case, be it the arrogant proclamations of the Teamster official or the soothing obfuscations of the AFL-CIO, can violence and extortion be tolerated as a routine operating procedure for any group if a free society is to survive.

The second reason for enactment of S. 462 is found in the very nature of federal labor policy.

Labor unions are uniquely privileged institutions in American society and their privileges have been conferred solely through federal law. Labor unions are granted special monopoly status, coercive powers, and legal immunities denied all other segments of society.

The federal government has taken upon itself the responsibility to foster and encourage labor unions and to regulate labor relations to a degree unparalled in any other segment

of the private economy or society. The conclusion reached by union officials that they are above the law is a natural consequence of the broad array of privileges and special immunities which Congress has granted them. These special powers and immunities lead union officials to the inevitable conclusion that they are justified in employing violence and extortion to achieve their ends.

Given the pervasive nature of federal protection and encouragement of labor unions, it is not only logical but incumbent upon the federal government to assume the responsibility for the regulation of union actions which are a direct and inevitable result of that government policy.

The consistency with which violence and extortion is used by organized labor to achieve its goals can lead only to the conclusion that such activity is a conscious, calculated operating policy for the officials of organized labor. It is imperative that the federal government assume its responsibilities to police such federally-encouraged violence and to enforce and protect other citizens upon whom the government has not conferred the plethora of special powers, monoply privileges and exemptions.

Violence in labor disputes is distinguishable, to a significant degree, from violence in other contexts because the federal government has regulated labor relations primarily for the benefit of unions and their adherents. The 79th Congress recognized this fact and sought to have the federal government assume its responsibilities to prevent such violence from its uniquely privileged creature. The Supreme Court, however, said that the pervasive federal labor policy was pre-empted and that the Congressional intent as embodied in the Hobbs Act was subservient to the overall federal labor policy. Thus, the federal government once again abdicated its responsibility in preventing violence and extortion by the institution which received its most favored largess.

In fact, I believe that this special relationship between organized labor and the federal government calls for stronger legislation than that embodied in S. 462. However, early adoption of the amendments to the Hobbs Act as embodied in S. 462 is a positive step in the right direction.

It is also very clear that Congress never intended to grant an exemption to union officials from the Hobbs Act. In fact, the enactment of the Hobbs Act was a specific reply to court proceedings in U.S. v. Local 807 with regard to the 1934 Anti-Racketeering Act. The legislative history is crystal clear. During the debate in the 79th Congress on the Hobbs Act, Congressman Celler of New York offered an amendment which would have expressly exempted labor unions from application of the Act. This amendment was defeated.

Congressman Whittington expressed the view of the majority of the House, and of Congress as a whole, when he said;

"The pending bill (Hobbs Act) will provide for punishing racketeers who rob or extort. There is no justification for labor unions opposing the bill as it constitutes no invasion of the legitimate rights of labor. Robbery and extortion by members of labor unions must be punished. Labor unions owe that much to the public. In demanding the protection of laws, labor unions should urge that those engaged in legitimate interstate commerce be protected from robbery and extortion."

It is obvious, through any reading of the debate of the 79th Congress enacting the Hobbs Act, that Congress never intended to create an additional exemption from federal labor policy for labor unions from application of the Hobbs Act.

Finally, Mr. Chairman, the principle of equal justice under the law; the very principle upon which are nation was founded, demands the elimination of the union officials' exemption from application of the Hobbs Act.

There is no justification or defense for the establishment

of two systems of justice; one for union officials, and another for all other citizens.

The Hobbs Act, as well as all federal criminal statutes, has been enacted to insure consistent criteria and punishment for crimes affecting interstate commerce and those with an overriding national interest.

Clearly, in adopting the Hobbs Act, Congress declared that the prevention of violence and extortion in interstate commerce is a national concern. Why such activities suddenly lose their national import if they are committed by union officials is unfathomable.

Senator Grassley's proposal, S. 462, is an even-handed effort to restore equity to federal criminal law. Its aim is to provide meaningful relief against acts of major, planned, extortionate violence by union officials.

It is my sincere hope that fairness -- and the original Congressional intent -- will soon be restored to the Hobbs Act through the enactment of S. 462.

Senator EAST. Our next witnesses are Mr. Claude Prater and Mr. Mark Pirkle.

Gentlemen, if you would like to come forward. I think you and other witnesses this morning have counsel. Of course, we invite them to sit at the table and assist you in whatever way you would like them to assist.

Gentlemen, you can proceed if you will, please.

STATEMENT OF MARK PIRKLE, ACCOMPANIED BY CLAUDE PRATER, BILL PRATER, AND MICHAEL AVAKIAN

Mr. PIRKLE. I would like to thank you, Senator, for having us here today. With me is my father-in-law, Claude Prater and brother-in-law Bill Prater. We flew up here yesterday from Dallas-Fort Worth area to participate in this hearing. With us also is Michael Avakian, who is our counsel on the Center on National Labor Policy here in the District of Columbia area.

I would like to present this statement at this time if I could.

Senator EAST. All right.

Mr. PIRKLE. As part owner of a small, family mining operation in Oakman, Ala., during the violent coal miners' strike of 1977 and 1978, we were subjected to a relentless campaign of terror by the United Mine Workers union.

The tension came to a head on February 2, 1978. I will not forget that day for as long as I live. There were seven of us at the mine site performing maintenance work on our equipment. Suddenly a group of about 15 men trooped up the hill to our site. Like the goon squad of the summer before, they carried clubs, knives, and beer. Remembering our last encounter with a UMW posse, Claude picked up his 30-caliber carbine rifle and walked down the hill to meet them. They told us that we were going to shutdown and go home. When I asked them their names, all they said was "We are UMW" and told me they had come up to "knock some heads." Then some of the men rushed us with clubs. Claude fired a shot into the ground and they scattered.

The union miners built three bonfires with old tires soaked in gas at the intersection of Highway 69 and Blue Lake Road, which was the road leading to our mine.

With the roads jammed by union miners and the intersection well lit by the bonfire, we knew it was impossible to escape by car. All we could do was retreat to a nearby cabin owned by Stancil Herron. We knew the union miners would find us sooner or later so we did not go inside but sat inside our cars, running our engines, listening to CB radios, trying to stay warm. Then the shots began, dynamite began exploding. The union miners were combing the woods firing shots in the air, looking for us. At 8 p.m. we got so cold we finally went into Stancil's cabin and listened on the radio to outside news reports of the riot at our mine.

Meanwhile my mother-in-law was making frantic calls to Governor Wallace's office. Finally, she got through and Alabama State troopers received orders to come in and get us out.

We did not know it then, but the Governor had been keeping track of the news reports and the massive buildup of UMW people that day. He authorized the full available contingent of Alabama

State Police special operations forces for the mission. That is 4 platoons of 20 or 30 men specially trained for riot control. There are two units stationed in the northern part of the State and two units stationed in the southern part of the State. Governor Wallace sent them all down to Oakman to get us out.

At that time, no one, not even the police, knew for sure just where we were as we lay hiding in Stancil's cabin. We were lucky that a friend knew of our whereabouts and tipped off the State police. Soon, a State police helicopter and two Army National Guard helicopters were flying over with search lights. But UMW sharpshooters drove them off by firing at the helicopters. One of the pilots, a former Vietnam war veteran, said the campfires and dynamite and the rifle shots, coming from the miners, made the scene look like a Vietnam fire fight.

Meanwhile the union miners discovered our location and surrounded the house screaming for us to come on out. They yelled that we were not going to get out alive.

Around midnight, a convoy of cars came up the hill to the house. It was the State police. A man called through a bullhorn for us to come out. But until the police cars turned on their emergency lights to identify themselves, we were too terrified to move.

The riot squad gave us special riot helmets, put us in cruisers, and told us to hang on. As we drove slowly from the site, the union miners beat on the cars, threw rocks, and hammered on the hoods. I was later told that thousands of dollars' worth of damages were inflicted on the State police cars at that time. They estimated between 1,500—1,200 to 1,500 miners trying to get at 7 of us.

The State police drove us 5 miles to their staging ground at the Oakman High School football field.

The State police called Jack Trotter, the sheriff of Walker County, where Oakman is, to take us home. He told the State police that this was a labor dispute and he would not get involved. Sheriff Trotter refused to have anything to do with us. This did not surprise me, since he had pretty much ignored our pleas for help during the months of harassment by the union miners.

Later, it came to light that the United Mine Workers union provided cash assistance to Sheriff Trotter and the district attorney in their political election campaigns. Perhaps that is why it was the State police, and not local lawmen who came to help us, even though CB airwaves were jammed with the reports of the riot going on at our mine, and television and radio reports blared news of the riot constantly as the siege continued for hours.

I also now know why it took so long for the State police to get us out. Simply put, UMW miners were not afraid of the State police.

Only 2 weeks before the riot at Oakman, Wilburn Lollar and three other top officials of the United Mine Workers union in Alabama met with Governor Wallace at the Governor's request. At that time Governor Wallace told them they had better stop the campaign of violence or he would call out the State police. Apparently, even Governor Wallace's threat to mobilize the State police to protect lives and property did not concern the UMW too much. None of these UMW officials told their membership to stop their war of violence in the State of Alabama.

Since the riot, we have been forced to shut down the mine at Oakman. Months of strike-related violence combined with our inability to mine coal squeezed us out of business.

None of the union miners who rioted and tried to kill us were ever taken to jail or convicted of any crimes as a result. They got off scot free. I sincerely hope that other employers and workers threatened by union violence in the future can turn for protection to a Hobbs Act amendment that makes union extortion the same Federal crime for union officials as it is for all other Americans.

Senator EAST. Thank you, Mr. Pirkle.

I have a question that I was going to ask you, but perhaps Mr. Prater was also going to speak to this. We might quickly get your comments. Again, Mr. Pirkle, I appreciate your concise statement. You have revealed some critical facts here that I think will be valuable for those who supported the Hobbs Act amendment.

Mr. Prater.

Mr. PRATER. Mr. Pirkle pretty well covered about what I had to say about it. It amplifies the point, we are down there in that old remote area like that, you have nobody to turn to for help because the local law, you know, they would not even talk to us. After the State police got us home into town that night, about 4 o'clock in the morning, they called the local law to harass the residents. The local law would not even harass the residents, they did not want to be seen hauling us around. It pretty well brings out the point that the local law will not take part in union violence. Whoever is—you might say at bay at the time is more or less—at least whatever they can come up with for self protection, I guess you would say. Had it not been for Governor Wallace, we would probably still have been laying on the hill over there.

Senator EAST. All right, thank you.

As points of clarification of my own thinking, you two gentlemen were obviously from Alabama, and were involved as independents in the mining business and activity there. In terms of what you have described here, you obviously were subjected to violence, and, according to the statements of those who were committing the violence on you, they apparently were part of union activity. Obviously, I think that intimidation by the union was another factor.

Your argument also states that except for the effort made by Governor Wallace and State highway patrol, there was not adequate State and local law enforcement response This being the case, two fundamental things come of your experience. First you were driven out of business because of the intimidation and violence that you experienced; that is, you suffered obviously a rather severe personal and economic loss.

Second, no convictions ever arose out of this activity at the State or local level. Therefore your contention affirms that if there is going to be any effective enforcement it has to occur at the Federal level via this change in the Hobbs Act, whereby Federal authorities would have had the option to come in. As it was, they did not come in because the union group intimidating you would be excused or at least excepted from Federal prosecution under the *Enmons* decision of 1973.

Again, I am not trying to put words in your mouth. Is that in effect what you gentlemen are saying?

Mr. PRATER. Yes, sir, that is right.

On a previous occasion the union came in and beat up some of our equipment, damaged it quite extensively for a small operator like we were. We went to the sheriff and reported it to him and he said, "Well, there is nothing I can do." He said; "I am a union man myself."

So we were at the mercy of our own capabilities at that time.

Senator EAST. Prior to the particular episode you described, had you personally, the two of you, been subjected to this similar kind or kinds of pressure and activity?

Mr. PRATER. Yes, sir, lots of it.

Senator EAST. In your experience, was there a pattern of this, not only against you but against others that you are aware of in your area or in the State, generally? In other words, this was not an uncommon thing.

Mr. PIRKLE. No.

Mr. PRATER. It was going on all in the area, every small miner we knew was under the same gun.

Senator EAST. Was it a statewide problem as you saw it?

Mr. PRATER. Yes, sir.

Senator EAST. At least to your knowledge.

Mr. PRATER. Yes.

Senator EAST. You are suggesting again in your personal experience this occurrence was not unique and merely an unfortunate personal experience. This particular episode that you described in detail, seems to have been part of a developing pattern not only with regard to you personally, but one that was true in the region and the State. I guess somewhat underscoring the statistics that Mr. Larson brought to our attention, and certainly as you gentlemen saw it, this is not an imagined problem but it is a real, genuine one.

Mr. PRATER. Probably even larger than anyone realizes.

Senator EAST. Well, gentlemen, I appreciate your coming and your statements will be made a part of the record. I again thank you for coming and if you have no additional remarks to make, we shall allow you to depart.

Mr. PIRKLE. Thank you, Senator.

Senator EAST. Unfortunately, we now have a vote taking place. I will have to go over and vote. As you people are aware, we have to go in person to vote; we cannot call it in or vote by proxy.

What I think might be appropriate in the interest of time, is to have staff receive testimony. I am reluctant to do so, because I do not know how to be at two places at one time. I think, however, it is necessary. I realize your time is as precious as mine. One might even make a case that the time of an ordinary citizen, in this country, is more valuable than the time of a Member of Congress. We will not get into the philosophical discussion, but on the theory that your time is valuable, too, I would suggest that, if the witnesses would like to proceed, we can receive their testimony from our own staff, and if I can return I certainly will. So I am going to allow counsel to continue receiving testimony from the remaining witnesses and if there is any way I can, I shall return.

Thank you.

[Statement submitted by Mark Pirkle follows:]

PREPARED STATEMENT OF MARK PIRKLE

Mr. Chairman:

My name is Mark Pirkle. With me is my father-in-law, Claude Prater, and brother-in-law Bill Prater. As part owner of a small, family mining operation in Oakman, Alabama, during the violent coal miners' strike of 1977 and 1978, we were subjected to a relentless campaign of terror by the United Mine Workers-union.

My story begins on June 20, 1977, when a gang of 30 to 40 armed men identifying themselves as union miners stormed onto our mine site and ordered us off our own property. The union miners brandished clubs, knives, and at least one rifle. Fearing for our lives, we began to abandon the mine.

In the process of abandoning the mines, one of our truck drivers attempted to leave with a load of coal. Union miners swarmed his rig, ripped open his door and beat his legs with ax handles while he clung desperately to the steering wheel. We had no choice but to dump the load of coal to save him.

Sometime after this incident, Jerry McCoy, an international organizer for the United Mine Workers of America, came out to the mine and informed me that this sort of an "incident" could happen again if we did not join the union.

We had a union vote and meetings to discuss union representation at the request of McCoy, but when the votes were tallied my workers had issued a resounding NO to the unions' demand. Yet still the harrassment continued.

When it became apparent that we were in no way interested in joining the UMWA, Mr. McCoy threatened to dirty the coal we sold to the Gorgas Power Plant in Alabama. You may sell

your coal, McCoy said, but it will be dirty. Senator, as you may know, in the coal business, power companies rate the purity of coal they buy and then pay their suppliers accordingly. It's been documented that prior to our troubles with the union, the power plant had complimented us on the quality of our coal. But after our employees voted not to unionize, the quality ratings deteriorated dramatically, and the price we were getting for our coal dropped drastically.

While all of this was going on, anonymous callers harrassed my family day and night with repeated phone calls threatening us with death and our wives with sexual abuse. Syrup poured into the engines of our mining equipment inflicted thousands of dollars in damages. Finally, for the safety of our family and our workers, we decided in December of 1977 to close down operations for the duration of the UMWA strike.

For the next two months, we did what we could to maintain equipment at the site. We didn't mine any coal, but the terror continued.

The tension came to a head on February 2, 1978. I won't forget that day for as long as I live.

There were 7 of us up at the site just moving coal around, but not doing any mining. We were performing maintenance work on our equipment and pushing gravel around and removing overburden.

Suddenly, a group of about 15 men trooped up the hill to our site. Like the goon squad of the summer before, they carried clubs, knives and beer. Remembering our last encounter with a UMW posse, Claude picked up his 30 caliber carbine rifle and walked down the hill to meet them. They told us that we were going to shut down and go home. When I asked them their names, all they said was "we're UMW" and told me

they had come up to "knock some heads." Then some of the men rushed us with clubs. Claude fired a shot into the ground and they scattered.

Meanwhile, Claude's wife, who managed the company office back in town, heard on her C.B. radio that union miners were pouring in from all over to surround the mine. The C.B. channels were jammed with their messages to each other. She called the State Police, who arrived at the scene at about 5:00 pm. Two troopers took a quick look at the situation, and told us we'd better get out. With night time rapidly approaching, my men and I scurried around the site hiding our equipment from certain destruction during the night. But by the time we finished about 1 hour later, the roads were jammed with UMW men, and the police had left. It was now night time and we were trapped.

The union miners built 3 bonfires with old tires soaked in gas at the intersection of Highway 69 and Blue Lake Road, which was the road leading to our mine.

With the roads jammed by union miners and the intersection well lit by the bonfire, we knew it was impossible to escape by car. All we could do was retreat to a nearby cabin owned by Stancil Herron. We knew the union miners would find us sooner or later so we didn't go inside but sat inside our cars, running our engines, trying to keep warm. And then the shots began. The union miners were combing the woods firing shots in the air, looking for us. At 8:00 pm we got so cold we finally went into Stancil's cabin and listened on the radio to outside news reports of the riot at our mine.

Meanwhile my mother-in-law was making frantic calls to Governor Wallace's office. Finally, she got through and Alabama State Troopers received orders to come in and get us out. We didn't know it then, but the Governor had been keeping

track of the news reports and the massive build up of UMW people that day. He authorized the full available contingent of Alabama State Police Special Operations forces for the mission. That's 4 platoons of 20 or 30 men specially trained for riot control. There are 2 units stationed in the northern part of the state and 2 units stationed in the southern part of the state. Governor Wallace sent them all down to Oakman to get us out.

At the time, no one, not even the police, knew for sure just where we were as we lay hiding in Stancil's cabin. We were lucky that a friend knew of our whereabouts and tipped off the STATE police. Soon, a state police helicopter and 2 Army National Guard helicopters were flying over with search lights. But UMW sharpshooters drove them off by firing at the helicopters. One of the pilots, a former Viet Nam war veteran, said the campfires and dynamite and the rifle shots, coming from the miners, made the scene look like a Viet Nam fire fight.

Meanwhile the union miners discovered our location and surrounded the house screaming for us to come on out. They yelled that we were not going to get out alive.

Around midnight, a convoy of cars came up the hill to the house. It was the State Police. A man called through a bull horn for us to come out. But until the police cars turned on their emergency lights to identify themselves, we were too terrified to move.

The riot squad gave us special riot helmets, put us in the cruisers, and told us to hang on. As we drove slowly from the site, the union miners beat on the cars, threw rocks, and hammered on the hoods. I was later told that thousands of dollars worth of damages were inflicted on the state police cars at that time.

The state police drove us 5 miles to their staging ground at the Oakman High School football field.

The state police called Jack Trotter, the sheriff of Oakman, to come take us home. He told the state police that this was a labor dispute and he wouldn't get involved. Sheriff Trotter refused to have anything to do with us. This didn't surprise me, since he had pretty much ignored our pleas for help during the months of harassment by the union miners.

Later, it came to light that the United Mine Workers-union provided cash assistance to Sheriff Trotter and the District Attorney in their political election campaigns. Perhaps that's why it was the State Police, and not local lawmen who came to help us, even though C.B. airwaves were jammed with reports of the riot going on at our mine, and television and radio reports blared news of the riot constantly as the siege continued for hours.

I also now know why it took so long for the State Police to get us out. Simply put, UMW miners weren't afraid of the State Police.

Only two weeks before the riot at Oakman, Wilburn Lollar and 3 other top officials of the United Mine Workers-union in Alabama met with Governor Wallace at the Governors request. At that time Governor Wallace told them that they'd better stop the campaign of violence or he'd call out the State Police. Apparently, even Governor Wallace's threat to mobilize the State Police to protect lives and property didn't concern the UMW too much. None of these UMW officials told their membership to stop their war of violence in the state of Alabama.

Since the riot, we have been forced to shut down the mine at Oakman. Months of strike-related violence combined

with our inability to mine coal to squeeze us out of business.

None of the union miners who rioted and tried to kill us were ever taken to jail or convicted of any crimes as a result. They got off scot free. I sincerely hope that other employers and workers threatened by union violence in the future can turn for protection to a Hobbs Act Amendment that makes union extortion the same federal crime for union officials as it is for all other Americans.

Mr. SULLIVAN [presiding]. If the Hinotes can come forward, we will receive their testimony into the record. The Hinotes are from Port Neches, Tex., and they are accompanied by their attorney, Robert Gore, who is with the National Right to Work Legal Defense Foundation.

Mr. Hinote, would you like to enter your statement?

STATEMENT OF WILLIAM H. HINOTE, PORT NECHES, TEX., ACCOMPANIED BY BARBARA ANN HINOTE AND WENDY HINOTE; AND ROBERT GORE, NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION

Mr. HINOTE. My name is Bill Hinote and I am a 51-year-old worker from Port Neches, Tex. With me today are my wife Barbara Ann and my daughter Wendy. For the past 25 years I have been employed at American Petrofina's oil refinery in Port Arthur, Tex.

I would like to make this very brief statement supporting Federal jurisdiction to investigate and prosecute violent crimes committed in the course of a labor dispute. I would like to make it very clear that I support the American labor movement and have been a long-time member of the Oil, Chemical and Atomic Workers Union, AFL–CIO. Additionally, I do not believe that the Federal Government should be involved in policing normal, every-day labor disputes. However, when a labor dispute becomes extremely violent and involves death threats and/or shootings the existence of Federal jurisdiction would be extremely helpful. My own recent experiences demonstrate why Federal jurisdiction is needed.

On January 8, 1982, Local 4-23 of the Oil, Chemical and Atomic Workers, AFL–CIO went on strike against various refineries in the Port Arthur, Tex., area, including a strike against my employer. I supported the strike and walked the picket lines with my fellow workers. The strike was over increased wages and benefits as well as work rule changes sought by the company. After the strike had gone on about 8 months, I became disillusioned with the union's bargaining position. I felt that they had backed themselves into a corner and did not know how to get out. Originally, I decided to go back to work about September 1, but decided to stay out a little longer when I heard that additional negotiating sessions were

planned. After these additional negotiations proved fruitless, I told my coworkers, including a union steward, that I was going back to work.

On Wednesday morning, September 22, I crossed the picket line and returned to work. About 10 a.m., my wife received the first of a series of telephone calls. This first call stated, "Tell Bill we are going to get him" and "You had better watch your little girl too." My wife told him that a gentleman would not make such a call and he responded, "A gentleman would not cross the picket line."

During the next few days, my wife received a series of obscene phone calls. The vulgarity was extremely crude and my wife hung up on the callers. After the first couple of calls my wife told the callers that she was taping all of the calls—after that there would just be silence on the line when we answered the phone.

On Friday or Saturday, September 24 or 25, a union official followed my car when I left the plant after work. He quit following me when it became obvious that a company security car was also following me. During the next week we continued to receive harassing phone calls and the house was repeatedly pelted with large rocks—2 to 3 pounds. Additionally, a man—now identified as a local union official—called my wife's place of employment threatening that store and demanding that my wife be fired. On Sunday, September 26 there was a statement made on the picket line that "something was going to happen to Bill Hinote."

On Tuesday, September 28, I was hung in effigy outside the plant gate. On Wednesday, September 29, another long-term union member, Emery Fontenot, crossed the picket line and returned to work.

I have been informed that, at approximately 4:30 p.m. on Friday, October 1, there was a discussion at the union hall about my having returned to work. One union official stated that "he was tired of this shit and something would be done that night." Another union official reportedly replied "that is right." A few hours later, at approximately 5:15 in the morning of Saturday, October 2, I was ambushed as I was about to get in my pickup truck to go to work. Approximately ten rounds were fired from a semiautomatic rifle. Five of the bullets struck me. The first one went in my right side and came out near my belly button. The next three bullets hit me in the legs. One hit my left knee and the other two lodged in my right thigh. I was also shot in the hand. I fell or semicrawled behind the truck. I thought the shooting would never stop.

When the shooting finally did stop, I limped to the back door yelling for help. My wife let me in and then she and my daughter called for an ambulance. We then called the plant to let security know what had happened. They said call the police, which we did. About this time, I became dizzy and do not remember too much after that. When the ambulance arrived, my wife accompanied me to the hospital and my daughter stayed to meet the police. A few hours later, when my wife returned home from the hospital, the harassing phone calls began the instant she walked through the door.

The afternoon that I was shot, Emery Fontenot and his wife began receiving harassing phone calls. One call told them to watch the 10 p.m. news which had a special report on the ambush. The

next morning, Mrs. Fontenot received a telephone call stating that her husband "was a dead man." During the next week the Fontenot children, ages 7 and 12, received telephone calls stating that their daddy was a coward and would be killed. The Orange County Sheriff's Department began providing around-the-clock security for the Fontenots. My employer provided security for my family.

On October 4, the Monday after I was shot, a union official called my wife's place of employment and—believing he was talking to my wife—stated "we did not do a very good job on your husband. Your ass is next. If we have to burn down the store and get you, we will get you." Other calls were placed to my wife's employer threatening to blow up the store if my wife was not discharged. Because she and her fellow employees worked behind a plate glass window, it was decided that she should go on a leave of absence until the violence stopped. After the shooting, my employer offered a $50,000 reward for information leading to the arrest and indictment of the people who ambushed me. Although many people have provided information, most are too terrified to step forward and testify.

The local police, the district attorney, and the FBI have been involved in various phases of the investigation. It is my understanding that the FBI investigation has been limited to the bomb threats against my wife's employer. Since November 1982, the local district attorney has been presenting evidence to a grand jury. When some witnesses refused to testify about what they heard during the union discussions on September 26 and October 1, a local judge ordered them to answer the questions. The grand jury's term expires next week, and no one knows whether there will be any indictments.

To understand why Federal jurisdiction is necessary you have to be familiar with the local political climate and the pressures on local elected officials. The Beaumont-Port Arthur area is a good example. It is a beautiful area on the Texas coast with a very heavy concentration of industry, especially oil and shipping. All of the industries are heavily unionized and the labor unions have become a dominant force in local politics. Without the political support of these unions, a local politician simply does not have a chance to be elected.

For example, during the recent strike against the oil refineries, all of the local Port Arthur officials—judges, district attorneys, justices of the peace—took out a large ad in the local paper urging everyone to support the strikers. It would seem that the elected officials should be neutral during a labor dispute. Not so, and in Port Arthur, that would be political suicide. My point is that elected officials—to remain in office—must actively support the labor movement. In all fairness to the local officials, I must stress that after the ambush, they have actively pursued the investigation. Whether they will be reelected remains to be seen.

Because of their political strength in the Beaumont-Port Arthur area, some of the more militant local labor unions believe that they are above the law. For example, in 1975, a mob of approximately 300 union supporters from the Port Arthur area attacked a nonunion construction company, beating its employees with iron rods and wooden boards, overturning and setting fire to the construction equipment, and smashing the employees' automobiles.

I believe that if the union officials who directed the attacks against my wife and me are allowed to go unpunished the power of the local labor unions will become overwhelming. I also believe that many local residents know of evidence and facts which would lead to the conviction of my ambushers, but are too terrified to come forward and testify.

If the investigatory resources of the Federal Government were made available, these witnesses would be located. More importantly, with Federal jurisdiction, these witnesses could be put in the Federal protection program and be free to tell their story without fear of reprisals. Then, and only then, could the few militant and corrupt union officials be forced from office. Then the unions would be free to do what they do best—fairly representing employees in their dealings with management. Then—and only then—will employees and their families be free from the fear of being ambushed in the night.

Thank you very much.

Mr. SULLIVAN. Thank you, Mr. Hinote. I thank your family for being with the subcommittee today.

Did you have any concern in coming before the subcommittee to testify? Had you received any phone calls from union officials or others in the area before coming to Washington?

Mr. HINOTE. No.

Mr. SULLIVAN. The ad you have entered into the record shows a series of names. Perhaps you could explain in more detail the circumstances in which that ad appeared in the paper and how that was received by other members of your community.

Mr. HINOTE. It is a local paper, Port Arthur News. The date, August 5, 1982.

Mr. GORE. If I could make a statement, Mr. Sullivan. The ad, in our view, seems to indicate that the local officials were supporting the strike. Additionally, it could be construed as evidence or a signal that the union would be free to take whatever actions were necessary to win the strike.

Now, in all fairness to some of these officials, they have actively investigated the ambush. But the point we are trying to make here is that the ad creates an impression in the community that the officials who have been elected to enforce the law are supporting one side of the labor dispute and therefore people on that side may feel free to violate the laws.

Mr. SULLIVAN. Generally, in your community, have you observed other acts of union violence in connection with picket line activities or strikes?

Mr. HINOTE. Yes.

Mr. SULLIVAN. What are some other examples in your area?

Mr. HINOTE. Some of the catering services that support the people during the strike have been abused, several instances.

Mr. SULLIVAN. To your knowledge, is that strictly local union activity or is there any evidence of complicity by others.

Mr. HINOTE. Well, to my knowledge, it would be local people. I do not know of any outside influences.

Mr. SULLIVAN. To your knowledge, have the investigations of some other acts of union violence gone deeply enough to determine whether or not there is any other evidence of national union or in-

ternational union complicity or any sort of higher level involvement?

Mr. GORE. Mr. Sullivan, I would counsel my client not to respond to that because there is a State grand jury investigating other aspects of the case. I think his statement pretty well lays out the facts. I am counseling him not to say what took place in the grand jury room.

Mr. SULLIVAN. I can appreciate those constraints and once again thank you for coming before the subcommittee. This information is necessary, as you can understand, in considering legislation like this. I appreciate that you were able to come forward and share your experience.

Do you have any further comments for the record?

Mr. GORE. No.

Mr. SULLIVAN. OK, thank you very much.

Next we will move on to the last witness for today's hearing, Professor Thomas Haggard. He is professor of law at the University of South Carolina. As was indicated earlier, he has written extensively on the question of union violence, including a number of articles previously published and perhaps some writings that will soon be published.

Professor Haggard.

STATEMENT OF THOMAS R. HAGGARD, ATTORNEY AND PROFESSOR OF LAW, UNIVERSITY OF SOUTH CAROLINA

Mr. HAGGARD. Thank you very much. I appreciate the opportunity to appear before this committee and to testify with respect to S. 462.

Before summarizing the points that I have made in my written statement, I would like to make a few preliminary observations.

Several reasons are commonly advanced for the proposition that the U.S. Congress should not enact criminal legislation against labor union violence. First, it is often said that this is not really a problem because such violence so rarely occurs. I think it is unfortunate that this aspect of industrial relations is not more extensively reported on and the appropriate data collected by the Bureau of Labor Statistics. The results would be revealing. Nevertheless, you have heard Mr. Larson's testimony about the scope of union violence in this country and you have heard some personal first-hand accounts of it. That is enough to suggest that there is a real problem here.

My own exposure to the problem of labor union violence has been limited to a reading of the reported cases. Over the last several years, however, I have read literally hundreds and hundreds of cases spelling out in tiresome detail, incident after incident of assault, battery, threats, and other forms of violence. Some of it occurs inside the plant, some of it occurs on the picket line, and a great deal of it occurs away from the employment situs—with the most terrifying form of that being attacks upon employees and their families at their homes. As is true in any context, I think you have to realize that the reported case law is merely the tip of an iceberg. Here the tip is very large indeed, suggesting the existence of an iceberg of significant dimensions.

Second, it is often said that even if labor union violence is a fairly common problem, it is a problem that State law can and should deal with. Indeed, the opponents of Federal legislation frequently ask, "What proof do you have that the States are inadequately enforcing their criminal laws against violence when it occurs in a labor union context?" thus suggesting that in the absence of such proof there should be no Federal law.

STATE ENFORCEMENT CRITICIZED

My own reading of the case law leaves me with the distinct impression that the vigor of the enforcement of State laws varies appreciably from jurisdiction to jurisdiction. Witnesses before this and other committees of Congress have testified of specific instances of inadequate State law enforcement. We have heard such testimony today. I think that the required proof has thus been satisfied, and I think this makes the case for Federal legislation more compelling. But I would also like to suggest to this committee that such proof is not essential. Indeed, I think the adequacy or inadequacy of State law remedies is largely a separate issue, and one which the States should confront.

The relevant question for this committee and for this Congress, however, is whether a legitimate Federal, national, or interstate interest is at stake here. If there is, then I would suggest that there should be a Federal law to protect it, even though there may be also State interests at stake which are independently protected by State law. This, I think, is a principle of general application. The willingness of local prosecutors to deal, for example, with Presidential assassination attempts should not preclude the existence of a separate Federal law on that crime. This is so because there is also a Federal interest at stake. So also with the problem at hand.

I would suggest to this committee that the Federal or interstate interest has been firmly established with respect to the problem of labor union violence. The National Labor Relations Act in 1935 made the triangular relationship between employers, employees, and labor unions a matter of primary Federal concern, because of the impact this has on the free flow of commerce. The Taft-Hartley Act Amendments of 1947 further recognized that strike, picket line, and other union-sponsored violence was interfering with employee free choice and with the collective bargaining processes otherwise protected by Federal law. Congress in that year thus decided that the Federal law should do something about such violence, even though at that time Congress also recognized that the States had a continuing interest in a problem and a concurrent jurisdiction over these matters. What Congress did in 1947 in the Taft-Hartley Act amendments is, in my opinion, inadequate response to the problem. But the point is this: We have already crossed the threshold issue as to whether the Federal law should be involved in this matter. The sole remaining issue is what Federal law should do about such violence. That is what we are here today to discuss.

Third, in opposition to bills like S. 462, it is often said that we should not have Federal criminal laws against union violence, because this will chill the exercise of otherwise legitimate rights. Unions will be afraid to call strikes or to mount picket lines, lest

something untoward occur and they find themselves criminally liable.

I do not find the argument compelling. The line between peaceful persuasion and violent coercion is not, I would suggest, that difficult to draw. One should be able to engage in the former without undue fear of inadvertently lapsing into the latter. And even if one does accept the proposition that violence is a natural but sometimes unintended consequence of strikes and picketing, then all I can say is that people who consciously decide to participate in an activity with such known propensities should bear the risk and the responsibility when that violence occurs and innocent people are injured.

Finally, if one is concerned about a chilling effect on rights, then I would ask them to think of the rights of thousands of employees—namely their right to work in a free society—which are chilled by the violence and threats of violence that they often encounter when they try to go to work.

In my prepared statement, Mr. Chairman, I make three points.

MAIN POINTS OF STATEMENT

First, I suggest that the failure of the Hobbs Act to cover most extortionate labor violence is merely part and parcel of a generally inadequate Federal response to the problem. It is against that background that S. 462 must be viewed.

Although Federal law is the source of the power that the unions are abusing when they resort to violence, the Federal Government seems unwilling to do anything about the abuse. The Norris-LaGuardia Act has made Federal injunctions against violence difficult to obtain. And as I mentioned earlier, although the Taft-Hartley Act makes labor union violence an unfair labor practice, the remedies that the NLRB grant neither actually remedy the harm that has been done to the employees nor serve as much of a deterrent.

The second point I make in my written statement is that the *Enmons* decision was wrongly decided in that it grossly misconstrued the intent of Congress, thus raising a serious separation of powers problem.

And third, I point out that not all union violence that occurs in this country fits into the definition or category of extortion, and that an amendment to the Hobbs Act is thus only a partial solution to a broader problem. It is, however, an important step to take and it is for this reason that I strongly support the bill introduced by Senator Grassley.

Thank you.

Mr. SULLIVAN. Thank you, Professor Haggard.

The Subcommittee on Separation of Powers is particularly sensitive to questions of constitutional law, and recognizing that the Government of the United States is a government of limited powers, Senator East was particularly concerned to have a clear record on the basis for the Hobbs Act.

Is it not correct to say that this amendment and the previous acts are based on the interstate commerce clause of the Constitution?

Mr. HAGGARD. That is correct.

Mr. SULLIVAN. The Senator also was concerned to know more about the legislative history, and to have that clarified.

Could you briefly review the statutory background of the previous congressional acts that led up first to the *Enmons* decision and also to this bill that has been introduced?

BACKGROUND OF HOBBS ACT

Mr. HAGGARD. I will be happy to do so.

The Hobbs Act, as you may know, was enacted in direct response to a Supreme Court decision in the *United States* v. *Teamsters Local 807,* which construed the Anti-Racketeering Act of 1934. The Supreme Court in that case held that the union's use of violence to obtain work for its members was not prohibited by that statute. The recurring theme of the Local 807 decision is that if the union's object is otherwise legitimate, then the use of violence to obtain it is not prohibited by an extortion statute. After the Court decided that case, Congress responded immediately, and the Hobbs Act was written specifically to reverse that decision. The debates on the Hobbs Act discussed union violence extensively. The examples that were cited in the congressional debates involve violence to obtain both legitimate and illegitimate union objectives. Congressman Hobbs objected to an amendment proposed by Congressman Celler which would have, Congressman Hobbs feared, provided an express exemption for union violence aimed at otherwise legitimate union objectives. The Celler amendment failed. And even the opponents of the Hobbs Act conceded that the bill did and should prohibit union violence used to obtain otherwise legitimate union objectives such as wage increases.

So, there was at the time of the Hobbs Act enactment a clear congressional intent to prohibit violence by labor unions designed to obtain property, whether that was an otherwise legitimate objective or not. And yet, in *Enmons* v. *United States,* the Supreme Court held that this act, the Hobbs Act, did not in fact prohibit such union violence if it was designed to obtain some otherwise legitimate union objective.

It was on this basis that Mr. Justice Douglas dissented. He was of the view that this holding was in clear derogation of the intent of Congress in passing the Hobbs Act and it would appear that he was correct.

Mr. SULLIVAN. I have a note saying that Senator East is on his way back and will be here shortly. To continue this line of inquiry since this is what the Senator wanted established for the record, there was a question about this area of legitimate union objectives.

In the debates in Congress, what was the basis for the idea that there would be an exception for violence in pursuit of legitimate union objectives, or is there some principle in the Federal labor law that creates a special exception in the area of legitimate union objectives?

Mr. HAGGARD. I do not recall anything in the Hobbs Act debates where any Member of Congress expressly indicated the view that this should be an exception. Congressman Hobbs was afraid that the Celler amendment would have this effect and spoke against it

for that reason. Since the amendment was defeated, the House apparently agreed that the legitimacy of the objectives is no defense to violence.

With respect to the National Labor Relations Act, this firmly establishes a right on the part of employees to go on strike and to picket in the pursuit of legitimate objectives. But the congressional history of the Taft-Hartley Act also clearly indicates, I think, that Congress intended to protect only peaceful strikes and peaceful picketing. They did not intend to extend Federal protection to any form of violence or coercion, no matter how legitimate the ultimate objectives.

Mr. SULLIVAN. One concern in the area of Federal legislation on a subject like violence is that this has traditionally been reserved to the States; criminal laws are generally a State concern.

Is there any provision in the act that attempts to keep the violations restricted to matters of significance that would warrant the Federal involvement in the investigation and prosecution in the cases?

Mr. HAGGARD. Which act was that?

Mr. SULLIVAN. In the bill that has been introduced, S. 462. As I understand it there are some provisions. Could you explain how they work?

Mr. HAGGARD. S. 462, as Senator Grassley explained it, does have an affirmative defense that limits the prohibition to what I would describe as significant or major acts of violence, so-called minor violene would not be covered by it.

Mr. SULLIVAN. What is the interstate character of the violence that would typically be covered by this bill that has been introduced? Does it require that there be evidence of the perpetrator of the violence crossing State lines? Is that the central element?

Mr. HAGGARD. I would think not. I would think the interstate connection is established when you show that violence has a definite impact on the free flow of commerce. To the extent that it shuts plants down that do business in interstate commerce, I think that is probably a sufficient constitutional nexus for Federal legislation to be enacted to protect that free flow.

Mr. SULLIVAN. You referred to the Norris-LaGuardia Act and that act's relation to this area of controlling violence in labor disputes.

Do you have any recommendations that the Senate should take under consideration for changes to the Norris-LaGuardia Act, anything related to this area?

Mr. HAGGARD. Well, the Norris-LaGuardia Act was written in 1932. At that time Congress perceived, what it thought were certain abuses by the Federal courts in granting injunctions in labor disputes. It perceived a promanagement bias in the courts; and Congress also apparently felt that the courts, through the use of the injunctive power, were essentially setting social policy that Congress thought it should set. I would suggest to you that these problems, whether they were real or imagined, which led to the Norris-LaGuardia Act no longer exist. We do not have a Federal judiciary that is biased against labor unions. We do not have a problem with the Federal judiciary attempting to set legislative policy through the use of its powers as a court of equity. Congress

has firmly established itself as the spokesman in that regard. The residual effect of the Norris-LaGuardia Act, however, is still to make it difficult to get injunctions even in cases of violence. I am at a loss to understand why that should be the case.

Mr. SULLIVAN. This certainly would be an area of interest to the Subcommittee on Separation of Powers which has jurisdiction over a number of legislative proposals to withdraw jurisdiction of Federal courts over various matters of concern where the courts have been perceived as issuing injunctions for the purposes of implementing policy concerns in a variety of areas.

I see Senator East is returning now. I will defer further questioning to him. If you could remain at the witness stand, I will appreciate it, Professor Haggard.

Thank you.

Senator EAST [presiding]. Professor, I appreciate your being here with us and, again, I am sorry I could not be here when the Hinotes were testifying. But I would like to personally thank them for coming and I regret I got called away for a vote. I know I have your printed statements from the Hinotes and also from Professor Haggard.

There were two questions that, I wanted to ask of Professor Haggard; and I am sorry I could not be here for your testimony.

First, generally, on this matter of the need to determine the defect in the law brought about by *Enmons:* Why, in your judgment, did the Court do what it did? Did this seem to be just a not uncommon problem of statutory interpretation in what was the intent of the legislators? Because the nub of the problem is that on one side there are those who say that the Hobbs Act was meant to cover this sort of thing. Congressman Hobbs indicated that that was the congressional intent. And certainly Justice Douglas in dissent, as Mr. Larson was pointing out, indicated that he thought that the Court was simply doing that which could not have been done with the Hobbs Act, namely, carving out this exception. As a law professor and one who could most usefully address himself to this question, what is the cause or what is the problem here? Why do not they see what others see clearly?

Mr. HAGGARD. Senator East, if I could read the mind of the Supreme Court I am sure I would be a very rich and successful practitioner. I do not really know.

My inclinations in this regard would tend to follow those suggested by Mr. Justice Douglas. I think he felt that the majority believed that extortion of labor union violence should not be prohibited by Federal law and they therefore bent over backwards to construe the statute to reflect their predelictions in that regard. That is the only observation that I can make about it.

Senator EAST. I noticed earlier in his comment, that Mr. Larson noted that perhaps we are divining two possible policy conflicts here. One, it never has been a policy in recent decades or at least until 1973, to exclude certain kinds of activity. And I guess candidly in this case union activity, was, his phrase, in a privileged position. So hence to the extent they could tease out of an act some vagueness, some degree of imprecision, then they would assume that Congress did not intend that union activity be included because there was so much other legislation and policy at the nation-

al level, indicating a rather strong preference to support union activity, union organizing. The Court's view was that without just clear and compelling language in expression of intent to the contrary Congress did not mean to include so-called legitimate union activity within the meaning of the Hobbs Act. I do not know how satisfying it is. On the other hand, many feel the proponents of this legislation in any fair reading of the Hobbs Act would have included it. And certainly the reading of the record would indicate congressional intent. I know it might have been a bit vague, but it would not be so perverse or gross as to say we wish to utilize our power under the commerce clause of article I, section 8, but we do not wish to utilize it to the extent that we would exclude activity done in the name of union organizing efforts.

Now, obviously I would not be so presumptuous as to say I could go back in time and speak for all of the congressional intent, but that is the nub of the problem. It does occur to me that even assuming there has been a policy on the part of the Congress and the Federal Government to put union organizing activity in a somewhat privileged position, I find it difficult to believe that any Senator or Congressman would say even to the extent of excluding them from interstate activity involving violence and extortion when it had already clearly been determined by congressional hearings and the intent of the Hobbs Act that the Congress felt it was a nationwide problem, not strictly union, but a nationwide problem. It is a legitimate area, I assume by any reasonable standard, whether it would be Federal law to deal with those who are traveling across State lines to foment violence, be it of any kind, labor or management or anything else under the heavens, where State law is not adequate for dealing with interstate trafficking. And that is the idea of the commerce clause, dealing with those unique and restrictive but real situations. We do have a federal system—it is not a confederation—it totally is not sovereign States, that is the Constitution, but we have a federal system and we have the allocation of power within the federal system. And certainly, if Congress, under the commerce clause, sees a nationwide problem of interstate crime, they can deal with it. So having decided to take that policy posture, it would occur to me there may be at least superficially a slight conflict between that and alleged privilege position for union activity. It does seem to me no Congressman or Senator would want to admit that even with that apparent policy conflict, activity of a criminal character, done under the guise of union organizing, certainly should not be exempt from the Hobbs Act.

But anyway, I suppose it is like arguing any problem of court interpretation of legislative intent; that is what made a lawsuit out of it. If it were so clear one way or another, we would not be here discussing the problem. Maybe I eventually have to come back to that premise, but I suppose all of the testimony of the legal character of this problem does focus upon what all parties seem to concede is a question of understanding regarding the intent of the law.

So we are trying to clarify that intent by this subsequent act.

Certainly the Court itself, least anyone think we are attempting to "tamper with Supreme Court decisions and so-called Supreme law of the land," the Court itself is saying in *Enmons,* is it not,

that this is what we felt the intent to be and obviously then we are being invited to clarify that intent. That is the purpose of the law.

Let me then move on to a second point that I suppose always arises——

Mr. HAGGARD. Senator, could I comment on that first point?

Senator EAST. Yes, go ahead.

Mr. HAGGARD. If that is the basis of the Supreme Court's approach to this, I think the conflict that they perceive is more imagined than real. My reading of the Taft-Hartley Act debates suggests that Congress had no intention whatsoever of providing any privileged status to labor unions with respect to the use of force or violence. Indeed, the Taft-Hartley Act Amendments made that an unfair labor practice. To the extent that the labor unions were granted certain privileges under that statute, as they certainly were, these privileges were nevertheless limited to peaceful or legal responses and not to the use of violence.

Senator EAST. I would agree with you and not try to play judge here, but just using one's powers of reason, one could for purposes of discussion have a so-called pro—a very pro attitude as a matter of public policy in terms of union organizing and collective bargaining. As Mr. Larson says, his organization is not at odds with that at all. They do believe in the freedom to organize freely, voluntarily, and to engage in collective bargaining. That is not the issue. No one is questioning that.

Assuming it is, even Mr. Larson I think for purposes of discussion and certainly beyond that assumes that it is. Certainly there have to be parameters to any kind of organizing activity or so-called collective bargaining activity; namely, that you cannot engage in force and violence against the personal property of another. We have all kinds of positive national policies on certain kinds of goals, ends, and activities. But certainly no one would be so brash or zealous in pursuit of their cause to suggest even to the extent of being excluded from laws dealing with criminal activity involving violence and extortion. I certainly would not want to be on the other side of that one in a debate.

But you are suggesting, I think if there is a conflict, it is more apparent than real, that in the real world of politics, laws, and policymaking we ought to be able without a great deal of extended discussion to even reconcile those two things. Yes, there ought to be the opportunity for free and voluntary and legal union activities as far as organizing any collective bargaining. But, no, no one, even in management in this case or unions are thereby given a preferred privilege status to even skirt beyond the criminal law engaged in illegal activity, antisocial activity, the type at least—I could not hear the last witness, the Hinote's—but certainly the other gentleman, Mr. Pirkle and Mr. Prater, certainly no one would want to rationalize that as a public policy.

Well, anyway, the nub of the problem again seems to keep coming back, whatever the intentions of the majority in *Enmons* and, it was a split decision, one might note that it was very close, that it would seem we ought to look seriously at this question of trying to close the alleged loophole.

A second question, again of a legal character which you are in a very good position to answer for us, and then I shall cease and

desist. This subcommittee, as you know, is dealing with separation of powers, federalism, and obviously this involves interesting problems of federalism, let alone separation of powers, but particularly federalism.

Mr. Prater and Mr. Pirkle were bringing this out in their testimony, which I thought was very useful; it is not an uncommon thing. One can hear about the federal system sometimes on certain matters and issues; State and local law enforcement seems to be either unwilling or unable, for whatever reason, to pursue this kind of activity. They felt in terms of their own personal experience, and they were suggesting it was not an uncommon experience in their region or in the State, and I gather from what Mr. Larson was saying with his statistics, it is not uncommon to the country as a whole to find this problem that you are simply not getting the response of State and local law enforcement. For whatever reasons, either an unwillingness to proceed with the commitment they should or perhaps lacking the local resources or tools, I do not know, and I do not profess to speak to all of that. As you see it, aside from the matters that you have already discussed, there is a sufficient nationwide problem on this, it is a matter of federalism if Congress chooses and has, obviously, to deal with this problem of interstate traffic in violence and extortion. Obviously they thought it was a nationwide problem, that we do have, as you see it, a genuine need, legally and otherwise to close this loophole that is consistent with a sound position of federalism. I will confess, I am as reluctant as anyone to involve greater Federal Government involvement at State and local level. I, of all people, would not want to be caught casually endorsing that kind of approach because I have often felt that as a matter of federalism and separation of powers in this country, particularly federalism, we have had too much Federal Government involvement in a whole range of areas. However, I am not an anarchist; I am a federalist, not an antifederalist; we do have a federal system; we do have powers under article I, section 8. I have always felt that we should utilize those powers to the extent we need to, in terms of dealing with interstate crime. Crime is certainly one of the fundamental responsibilities of government at any level to deal with, to protect us in our personal property and to protect us from foreign threat. It is about as critical role as the government can perform; certainly it is the most basic of fundamentals.

Just looking at it from that philosophical posture that we do not literally launch into a posture here of just further Federal, further enhancement of Federal power, as you see it, there is a deficiency here in terms of nationwide State and local law enforcement; that is, what these gentlemen described is not unique to their area of their State but there is a national pattern of it, hence justifying Federal Government involvement. That is really what I am trying to extract out of this thing, that as a matter of federalism what we are doing is not reckless or naive but that there is a genuine need, indeed a compelling need. And the Federal Government does have power under article I, section 8. This is a case without exercise.

Is that where we are?

Mr. HAGGARD. I think so. As I indicated in my statement earlier, from my reading of the case law I have certainly gotten the im-

pression that in some instances State and local enforcement was lax or nonexistent. I recall from reading the NLRB opinions that the board will frequently note that the culprits were arrested. Sometimes a conviction is indicated. But, other times, the board will note that the unionists were arrested but that the charges were dismissed. And I wonder why. Other times they make no mention whatsoever of any State enforcement of the criminal laws. And I wonder about that too.

The point I made earlier, however, is that whether or not State enforcement is or is not adequate—and I think you have sufficient evidence to raise some serious doubt about it—if you can recognize that there is a substantial Federal interest at stake here, then my position would be that there ought to be a Federal law to protect that Federal interest, whether or not there are also State laws protecting the State interests. The two can exist in tandem and work together for the common good.

Senator EAST. I think Congress has already indicated that intention in all other areas by the fact of the Hobbs Act itself. There is a desire of congressional intent to deal with this nationwide problem. Again, we keep coming back to the central problem. Is it prudent to exclude activity that is going on in the name of union organizing of union activity? At least the cosponsors of this legislation obviously feel there is no rationale for that exclusion. As Senator Grassley was saying, it has nothing to do with being promanagement or antiunion or any combination thereof; it has to do with the commonsense of the Federal law that is already on the books dealing with violence and extortion where interstate trafficking is involved.

Well, unless you have further comment, Professor Haggard, I would again like to thank you for coming. You are from the State of the distinguished chairman of the Senate Committee on the Judiciary, and the record ought to reflect that, if it does not already. I am sure the chairman, if he were in position to be here, would have wanted me to give you his welcome and greeting. And we thank you for coming.

Mr. HAGGARD. Thank you very much.

Senator EAST. Unless you have any additional comments to make, I shall cease.

[Statement submitted by Mr. Haggard follows:]

PREPARED STATEMENT OF THOMAS R. HAGGARD

My name is Thomas R. Haggard. I am an attorney and Professor of Law at the University of South Carolina. The problem of labor union violence, and how the law has responded to it, has been a subject of study and concern to me for several years now. I have found the legal response to be generally inadequate; at the federal level it is a curious mixture of narrow prohibitions, special exceptions, ineffective remedies, cumbersome procedures, and even some affirmative protection of a "right" to engage in such violence. The unique immunity that labor union violence enjoys under the Hobbs Act, an immunity S. 462 is designed to eliminate, is merely symptomatic of a larger and more pervasive legal antipathy toward this pressing problem.

The constantly recurring theme of the law -- evident in legislative histories as well as in the reported decisions of labor arbitrators, the NLRB, and both state and federal court judges -- is that a certain amount of violence is to be expected in labor disputes, and that such violence, although to be decried, is thus more or less "justified." Misconduct which, if committed under different circumstances would be clearly censurable, is, when it occurs in the context of a labor dispute, glibly referred to as mere "animal exuberence" -- not to be approved, but not to be taken too seriously either. And even the more egregious forms of violence are seemingly viewed as an unfortunate but inevitable part of otherwise legitimate union activities, to which the law should thus react with some restraint, lest the imposition of meaningful sanctions somehow "chill" the exercise of these activities. This attitude, and the reluctance of federal law to deal vigorously with labor union violence, is manifest not only in the Hobbs Act, which is the immediate concern of this hearing, but in other federal legislation as well.

There is, for example, the Norris-LaGuardia Act, 29 U.S.C. §§ 101-115 (1976). Designed to correct what was perceived in 1932 to be certain abuses in the issuance of injunctions in labor disputes, the Norris-LaGuardia Act severely limits the jurisdiction of the federal courts to grant equitable relief against concerted union activities. Although "unlawful acts" can still be enjoined under the Act (assuming that federal jurisdiction otherwise exists), stringent requirements must be satisfied before even the most egregious acts of violence can be the object of federal injunctive relief. The common law standards of vicarious liability have been replaced with the requirement that the persons to be enjoined must have actually authorized or ratified the violence; there must be proof that local police officials are unable or unwilling to protect the person seeking federal relief; and such a plaintiff must also show that, in spite of the violence being used against him, he has nevertheless made every reasonable effort to settle the dispute peacefully -- all of this in addition to satisfying the other normal requirements for obtaining equitable relief. The Norris-LaGuardia Act also imposes some rather involved procedural requirements that must be satisfied before an injunction can issue -- including prior notice to both the persons to be enjoined and the local police officials, a hearing in open court, the posting of a security bond, and the requirement of certain specific findings by the court issuing the injunction. And there are limits even on the issuance of a temporary restraining order.

The Norris-LaGuardia Act was a product of its time, reflecting a congressional distrust of the federal judiciary and the belief that "law served no useful purpose in labor disputes, save possibly to protect tangible property and prserve public order" -- and with federal injunctions properly being hard to obtain even with respect to the latter.

But today, the Act is a hoary anachronism. The federal district courts are no longer bastions of anti-unionism, if they ever were. The so-called policy of "unqualified laissez faire in labor relations," which the Norris-LaGuardia Act was said to reflect, has long since been superceded by a federal policy of thoroughgoing regulation of the labor management relationship. And "judicial usurpation" of the legislative power to define that relationship is no longer the problem that it allegedly was in 1932.

In sum, the purposes, policies, and objectives of the Norris-LaGuardia Act have been almost totally eclipsed by subsequent events. Nevertheless, the Act continues to have the residual effect of making it hard for a private party to obtain injunctive relief against labor union violence. Indeed, that would now seem to have become the primary remaining function of the statute. It would seem, however, that federal law should encourage resort to the federal courts for injunctive relief against union violence, rather than actively discourage it, as does the Norris-LaGuardia Act. See generally, Stewart & Townsend, Strike Violence: The Need for Federal Injunctions, 114 U.PA.L. Rev. 459 (1966).

Morevoer, the effect of this federal statute has not been limited to the federal forum. After Congress passed the Norris-LaGuardia Act, many local legislatures determined that they too should impose some limits on the power of their state courts to issue injunctions in labor disputes. These so-called "Little Norris-LaGuardia Acts" contain provisions similar to those of the federal act, thus often making it as difficult to obtain relief there as in the federal forum.

Like their federal counterpart, the state "Little Norris-LaGuardia Acts" also address a problem that no longer exists.

Many of the injunctions that they prohibit their courts from issuing, involving peaceful labor activities, are beyond the power of the states in any event -- due to subsequently developed doctrines of constitutional law and federal preemption. And burdening the labor injunction process with rigorous procedural and evidentiary requirements can no longer be justified by reference to the alleged partisanship of state court judges or their presumed tendency to act precipitously in such matters.

The inadequacy of the federal response to the problem of union violence can also be seen in the Labor-Management Relations (Taft-Hartley) Act, 29 U.S.C. §§ 141-187 (1976). In 1947, Congress recognized that labor union violence was a serious problem, that it was interfering with the right of employees to choose freely, that employers were being coerced to sign union contracts, that all of this was adversely affecting interstate commerce, and that this was thus a matter of national concern calling for a federal response. That response was contained in the Taft-Hartley amendments to the original National Labor Relations Act. In Section 8(b)(1)(A), Congress made it an unfair labor practice for labor unions or their agents to restrain or coerce employees in the exercise of their statutory rights. See generally, Haggard, Labor Union Violence as an Unfair Labor Practice, 34 S.C.L. Rev. 273 (1982).

For the most part, the National Labor Relations Board (NLRB) and the courts have liberally construed this prohibition. They have adopted a definition of restraint and coercion that includes the full panoply of criminal and tortuous misconduct, plus some. Employees are protected against such violence in virtually all of their normal employment and union relationships. Even violence that is directed initially against the employer has, in some circumstances, also been found to be coercive of employees. And Union responsibility is judged by reference to the more realistic common law standards of

vicarious liability, rather than those mandated by the Norris-LaGuardia Act.

But having found a violation, the NLRB and the courts have been unfortunately unable, or unwilling, to devise effective remedies for it. During the pendency of unfair labor practice proceedings, the General Counsel of the NLRB has authority to request an injunction against the continuation of the violence -- although this authority is sparingly exercised. Once a violation is found, the primary remedy in merely a cease and desist order--usually issued long after the violence has ended anyway. In addition, the union will normally be required to post and sometimes publish notices of its violation. Occasionally, the violence that a union has committed will also operate to deprive it of a bargaining order it might otherwise be entitled to. And in truly extreme cases, the NLRB may revoke the certification of a union whose propensity for violence is blatant and recurring. But these "remedies" serve very little purpose and hardly seem worth the administrative cost of issuing them.

On the other hand, the remedy that would effectively vindicate the rights of the employee-victims of this violence, and at the same time deter the union from future misconduct, is a remedy the NLRB has steadfastly refused to order -- namely, a back pay award to compensate employees who have lost work because of the union's unfair labor practices. Although such a back pay award is routinely issued against an employer whose violent interference with employee rights has resulted in lost pay, the Board's concern that financial accountability might unduly "chill" unionzation activities has led it to deny that remedy in the Section 8(b)(1)(A) content. The unavailability of this or other effective remedies make the Act's prohibitions against violence hollow indeed.

The most disturbing thing about the Taft-Hartley Act's approach to union violence is not, however, that its unfair

labor practice remedies are inadequate. It is, rather, that as construed by the NLRB and the courts, this statute actually provides some affirmative protection to certain kinds of violent and coercive misconduct. It is beyond dispute that under Section 7 of the statute employees have a right to strike and to picket, and an employer cannot discharge an employee who exercises this right. The legislative history of this statute clearly indicates, however, that Congress intended only to protect purely peaceful strikes and picketing. Yet, the Board and the courts have since extended the statutory protection to the so-called "milder" forms of coercion -- threats of physical harm, temporarily impeding access to the business, following employees and supervisors home, throwing eggs, pushing and shoving people and beating on cars as they attempt to cross the picket line, and other forms of general rowdyism. See generally, Haggard, Picket Line and Strike Violence as Grounds for Discharge, 18 HOUS. L. REV. 423 (1981).

One should not underestimate the coercive effects these so-called "milder" forms of violence have upon their victims. What the law protects in this regard contributes immensely to the aura of fear that surrounds many labor disputes. And it often leads to more serious violence.

Moreover, even if an employee's strike and picket line misconduct is so egregious as to be technically "unprotected" under the Taft-Hartley Act, the Board and the courts still have a number of theories that are used to require an employer to reinstate the guilty employee. The employer, for example, may be found to have inadvertently "condoned" the misconduct, thus making discharge impermissible. Alternatively, the misconduct might be characterized as a mere "pretext" and the employee's union allegiance found to be the "substantial" or "motivating" factor in the discharge, thus rendering the employer guilty of illegal discrimination. And finally, if the employer himself has committed other unfair labor prac-

tices, which theoretically have thus provoked the unprotected violence, then reinstatement of the discharged employee may be ordered under the so-called "Thayer Doctrine."

Both the condonation theory and the Thayer Doctrine, however, are based on questionable interpretations of the statute, and represent an unwarranted obstacle for employers who are merely attempting to cleanse their work force of violence-prone employees. And the unpredictability of the Board's approach to proving "motive" also tends to make the discharge of such an employee a risky proposition -- all of which is to thus discourage a very important self-help remedy to the problem of labor union violence.

In any event, it is against this background of a generally inadequate federal response to the problem of union violence that the Hobbs Act, and the proposed S. 462 amendments to it, must be viewed. The Hobbs Act was originally written after the Supreme Court had interpreted its predecessor, the Anti-Racketeering Act of 1934, in such a way as to exclude most violent labor racketerring from its coverage. Congress responded by passing the Hobbs Act of 1946, with the intention of reversing that dubious decision. However, in United States v. Enmons, 410 U.S. 396 (1973), the Supreme Court held that union violence aimed at meeting otherwise "legitimate" union objectives, such as increased wage payments from an employer, does not constitute illegal extortion under this statute either. There are several things wrong with the Enmons decision.

In the first place, it represents an erroneous interpretation of the statute and its legislative history. Although the congressional debates on the Hobbs Act are possibly obscure in some respects, a careful and objective reading of the Congressional Record conclusively demonstrates that Congress did intend to outlaw union violence even if it was aimed at attaining otherwise "legitimate" union objectives; Congress intended that unions should use only peaceful means to attain

such objectives -- an intention the Enmons decision frustrates. See generally, Haggard, Labor Violence: The Inadequate Response of the Federal Anti-Extortion Statutes, 59 NEB. L. REV. 859 (1980).

Second, the Supreme Court's interpretation of the statute, based apparently on what the Court thought the law should be rather than what it obviously was, raises serious separation-of-powers problems. In his dissent in Enmons, Justice Douglas pointed out that "the Court today achieves by interpretation what those who were opposed to the Hobbs Act were unable to get Congress to do" -- namely, exempt labor union violence from the coverage of the Act. Put differently, the Court rather openly used the judicial process to achieve a political result that could not, originally, have been achieved by the legislative process, and which the Court knew would also be difficult to undo by a later legislative process -- due to a change in the dynamics of the situation. The phenomenon is not unique to the Court's interpretation of the Hobbs Act, and that should be of concern to this Subcommittee on Separation of Powers. See supra, at 915, n.283.

Third, as a substantive matter, serious questions of fairness and equal protection are raised whenever a criminal statute, expressly or by judicial interpretation, grants exemptions solely on the basis of the status or identity of the person engaging in the otherwise proscribed conduct. To the extent that the Enmons' exception applies only to violent attempts by labor unions to attain their legitimate economic objectives, it is subject to this objection.

And fourth, the Enmons decision is simply a very clear manifestation of the attitude that I referred to in the first part of my statement -- namely, that labor union violence is somehow different from other forms of social violence and that the ordinary prohibitions of the criminal law should not necessarily apply to it.

Since S. 462 would restore the Hobbs Act to its originally intended meaning and subject labor union violence that is of an extortionate nature to its prohibitions, I wholeheartedly support it. My only objection to S. 462 is that it perhaps does not go far enough. To be sure, it is a step in the right direction. And if adopted, S. 462 would hopefully symbolize a new federal attitude toward labor union violence.

But extortionate violence is only part of the problem; it arises primarily in the collective bargaining context and is normally aimed at the employer from whom the "property" (wage payments or other economic concessions) is to be coercively obtained. But union violence occurs in other contexts as well, and is often directed at employees, prospective employees, customers, suppliers, and other members of the general public.

It is for this reason that I would urge your consideration of a bill like the one introduced by Senator Thurmond in 1981, S. 613, which would have made it a federal crime for a labor union or anyone else to interfere with interstate commerce by "inflicting, or threatening to inflict, death or serious bodily injury on any person" or by "willfully damaging to the extent of $2,500 or more any property, including real property, used for business purposes."

Serious labor union violence would seem to be a uniquely appropriate subject of federal criminal law. Since the 1930's, the fundamental premise has been that industrial relations affects interstate commerce almost by definition. The Taft-Hartley Act long ago recognized that labor union violence is a legitimate matter of federal concern. National unions, whose jurisdiction extends over many states, are frequently implicated when serious and wide-spread violence occurs. And even if the violence is otherwise local in its origin and focus, it nevertheless affects the union's organizational and collective bargaining strength -- which in turn impacts significantly

upon interstate commerce. To be sure, the states should retain concurrent jurisdiction over violence which occurs within their borders. But the existence of state law remedies has never precluded parallel federal involvement when significant interstate interests are at stake -- and it should be no different when the problem involves union violence.

I would like to thank the Subcommittee for their attention to these remarks and I will now attempt to answer any questions that they might have.

Senator EAST. I would like to, if they would after the hearing, come up and just meet the Hinotes briefly. I am sorry they were the only ones that I did not get to hear and to meet in person so I would like to at least get to personally meet them and thank them for coming.

Any other pressing need?

I gather not.

If not, we shall stand adjourned.

[Whereupon, at 12:45 p.m., the subcommittee was adjourned.]

APPENDIX

ADDITIONAL STATEMENTS FOR THE RECORD

Statement of
The Associated General Contractors of America
on S. 462

The Associated General Contractors of America and its 112 Chapters nationwide is comprised of approximately 32,000 firms including more than 8,500 of the nation's leading general contracting companies that perform more than $100 billion of construction annually.

The construction industry has been repeatedly harassed by wanton, organized jobsite violence. Violence at construction sites is no less despicable than violence which destroys newspaper printing presses or violence that would deny food to our cities. Individuals have been attacked and intimidated and property destroyed in the construction industry. The perpetrators are criminals but their actions go unpunished because too often local law enforcement officials do not invoke applicable state laws and because the Enmons decision precludes federal involvement.

Despite these acts of violence against persons and property there is virtually no investigation of these crimes because local sheriffs, city and state police are reluctant to become involved in these matters and the FBI and other federal officials lack jurisdiction. The result is that a contractor can be placed in a position where he must accept worker's demands or be harassed by threats backed up with sabotage and violence from which he is given no protection.

Federal government statistics are adequate evidence of the extent and severity of the problem. The Treasury Department's Bureau

of Alcohol, Tobacco and Firearms reported that the labor related motive behind bombings in 1977, 1978, 1979 resulted in the highest amount of property damage compared to all other motives.

Congress, in fact, recognized the extent of the problem when it enacted the Hobbs Act in 1945. At the time the act was passed Congressman Baldwin summarized the bill's intent by saying "This bill would not have been presented to the House if organized labor had recognized law and order in striking and in establishing their rights, as they have a right to do...labor has a right to strike, but when labor perpetrates that sort of thing (he was referring to an extremely violent activity related to a taxicab strike) they are going far beyond the bounds of reason."

Despite this intent, however, the Supreme Court in 1973 issued its interpretation of how the Hobbs Act applied during the course of a labor dispute. In the case of U.S. vs Travis Paul Enmons, the Court decided, incorrectly we believe, that the Hobbs Act does not apply to violence which is used to achieve "legitimate labor objectives."

The Court was closely divided on this issue, 5-4, with the majority opinion based on the interpretation of the word "wrongful." The Hobbs Act definition of "Extortion" is: "The obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force,violence, or fear..." The Court found that in the Act, "wrongful" is intended to "limit the statute's coverage to those instances where the obtaining of the property would itself be 'wrongful' because the alleged extortionist has no lawful claim to that property." Justice Blackmun in a concurring opinion, however, noted that "such acts deserve to be dignified as federal crimes" and he called on the Congress to clarify if it noted that the dissenting justices felt that indeed Congress had expressed its intention and that it did plan for the Hobbs Act to extend to labor disputes.

AGC believes that S. 462 presents the opportunity for Congress to reassert its original intention in passing the Hobbs Act and to overturn the Enmons decision. Extortion is a crime, no matter

who commits it and no matter what the objective is, and it should be treated as such. Those opposed to overturning Enmons claim that such an approach would subject the picket line "hot head" who loses his temper and throws a punch to a federal extortion conviction. When the Enmons decision was reached Justice William O. Douglas wrote the dissenting opinion in which he pointed out that this very argument had been made when the Hobbs Act was enacted and had been rejected. It was his view, and the view of previous court rulings that "mischievous conduct during a strike and actions which are the by product of frustration engendered by a prolonged, bona fide collective bargaining negotiation are often only low-level acts of violence that may be unfair labor practices or, at best, subject to state, not federal prosecution." S. 462 maintains this protection. A person cannot be convicted of committing extortion unless all of the elements of that crime are present. There must be the intention to undertake violent actions deliberately to influence management's decision. In addition, S. 462 provides an affirmative defense to prosecution if the activity was during a legitimate labor dispute, was restricted to minor bodily injury or minor property damage under $2,500, and was not intended to extort property. This defense provides more than adequate protection to the individual.

Opponents to S. 462 also argue that this is a states' rights issue because state and local authorities have always been responsible for enforcing laws against this kind of activity. It is ironic that the same organizations which have argued that federal preemption is necessary to protect workers' rights, now argue exactly the opposite logic when it comes to offering protection from violence. States exclusion from jurisdiction in labor matters has apparently extended into the law enforcement area, and many States appear to have the attitude that all labor matters should be handled by the federal government. As a result, it is imperative to return to federal law enforcement officials the tools necessary for providing protection during a labor dispute.

AGC believes that enactment of S. 462 will accomplish the long

sought after goal for which the Hobbs Act was intended. This bill does not create any new felony under federal law but merely restates in a clearer way the intent of the Hobbs Act. The bill would act as a deterrent against violence, without infringement on any rights of the states or labor organizations. AGC urges Congress to act to outlaw violence at construction jobsites and criminal acts aimed at construction owners, employers, employees and property.

STATEMENT OF ROBERT A. GEORGINE,
PRESIDENT OF THE BUILDING AND
CONSTRUCTION TRADES DEPARTMENT, AFL-CIO,
TO THE SEPARATION OF POWERS SUBCOMMITTEE
OF THE JUDICIARY COMMITTEE OF
THE UNITED STATES SENATE CONCERNING
S.462 TO AMEND THE ANTI-RACKETEERING ACT

INTRODUCTION

This statement concerning Senate Bill S.462 is submitted by the Building and Construction Trades Department of the AFL-CIO on behalf of itself and its 15 affiliated national and international unions which represent over four million workers. The Building and Construction Trades Department strongly objects to S.462, which proposes to convert misconduct that may occur in the course of a lawful economic strike into the federal crime of extortion. S.462 would accomplish this objective by amending the Anti-Racketeering Act, 18 U.S.C. § 1951, commonly known as the Hobbs Act. Currently, the Hobbs Act does not include such incidents within its definition of extortion.

Our opposition to S.462 is not based on support of the use of violence and threats as a means of achieving otherwise lawful collective bargaining objectives. We do not condone violence in any form. Our position is based instead, on the fact that such misconduct is already well regulated by state and federal law and application of the crime of extortion to such activity is wholly unnecessary. The Building and Construction Trades Department regards S.462 simply as an effort to inhibit the federally protected right of workers to participate in concerted activities.

The legislation currently under consideration by the Subcommittee, S.462, is yet another in the long line of proposals which have been offered during the last ten years to amend the Hobbs Act. Like its predecessors, S.462 is ill-advised and represents an unnecessary intrusion of federal criminal jurisdiction into an area already well policed by other federal and state laws.

The Hobbs Act penalizes by up to twenty years in prison whoever "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by...extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property infurtherance of a plan or purpose to do anything in violation of this section." The term "extortion" is defined in the Act as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

THE ENMONS DECISION

A. The Federal Government attempted to use the Hobbs Act in 1971 against members and officials of the International Brotherhood of Electrical Workers who were indicted for conspiring to use threats of violence and the fear of economic injury to secure an agreement from an employer to pay higher wages.

The Government contended that the Hobbs Act covered all attempts by union members and officials, through force or violence, to obtain the property of an employer engaged in interstate commerce. The Government also argued that the language of the Hobbs Act nowhere suggests a special immunity for union members and officials who use force and violence to obtain higher wages and better working conditions, simply because these could also be obtained through lawful collective bargaining.

The Supreme Court, in a five-to-four decision with Justice Blackmun concurring, held in United States v. Enmons, 410 U.S. 396 (1973), that the language of the Hobbs Act proscribes interference with interstate commerce by extortion, but that the use of violence to obtain higher wages is not within the statute's definition of extortion. The Court observed that "extortion" is defined in the Hobbs Act as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear," and reasoned that the word "wrongful" modifies the entire definition of extortion and not just the proscribed means. The Court's rationale was that it is always wrongful to use force, violence, or fear and, therefore, that the use of that term was also intended to modify the other phrase in the definition which refers to "obtaining the property of another."

Consequently, the Court refused to accept the Government's broad concept of extortion--the wrongful use of force to obtain even legitimate union demands of higher wages. Justice Stewart, writing for the Court, observed:

> The Government's broad concept of extortion--the 'wrongful' use of force to obtain even the legitimate union demands of higher wages--is not easily restricted. It would cover all overtly coercive conduct in the course of an economic strike, obstructing, delaying, or affecting commerce. The worker who threw a punch on a picket line, or the striker who deflated the tires on his employer's truck would be subject to a Hobbs Act prosecution and the possibility of 20 years' imprisonment and a $10,000 fine.

B. Subsequent judicial decisions have consistently recognized that "the effect of Enmons was to remove from the reach of federal criminal law the use of coercive tactics to obtain increased wages, but with the caveat that the prosecutor's hand would be stayed only when the payment is gained in furtherance of legitimate labor

objectives. Thus, the Enmons decision has not exempted labor officials and union members from all federal prosecution under the Hobbs Act merely because their alleged unlawful activity occurred in the context of a labor dispute.

In United States v. Daley, 564 F.2d 645 (2d Cir. 1977), cert. denied, 435 U.S. 933 (1978), the principal officer of a local union was convicted of a Hobbs Act violation because he requested and received at no cost six hundred tons of stone for his personal use from an employer then involved in collective bargaining with the defendant's union. The defendant union official also arranged to have two members of the local union provide their trucks to load and haul the stone after regular working hours. Neither of the drivers was compensated by the defendant union official for this work. Similarly, in United States v. Quinn, 514 F.2d 1250 (5th Cir. 1975), cert. denied, 424 U.S. 955 (1976), a clergyman who was authorized to represent certain employees of a retail store in a labor dispute was convicted of violating the Hobbs Act for receiving payment from the employer in return for removing a picket line around the employer's store. Each of these defendants was convicted of violating the Hobbs Act because he obtained a personal payoff through the use of coercive tactics.

Similarly, the courts have refused to recognize the Enmons decision as a general exemption of violent misconduct from prosecution under other federal criminal statutes. In 1980, a federal trial court dismissed an indictment against three union officials accused of burning two trucks owned by an employer involved in a labor dispute with their union. The court concluded in United States v. Thordarson, 487 F. Supp. 991 (C.D. Cal. 1980), that the Enmons ruling is not limited to extortion cases. Accordingly, the court ruled that the effect of Enmons was to remove from the reach of all federal criminal law the use of violence, threats and fear to obtain higher wages. Thus, the court dismissed the indictment even though it was based on a number of federal criminal statutes, but not the Hobbs Act.

Subsequently, however, the United States Court of Appeals in San Francisco reversed the trial court and held, instead, that the Enmons holding is limited to cases involving alleged extortion and does not apply to prosecutions under other federal statutes prohibiting use of explosives to damage vehicles used in interstate commerce, 18 U.S.C. § 844(i); travel in interstate commerce to commit arson, 18 U.S.C. § 1952 or conspiracy to conduct affairs of an enterprise through a pattern of racketeering activity, 18 U.S.C. § 1961(d). United States v. Thordarson, 646 F.2d 1323 (9th Cir. 1981).

The appeals court reasoned that the federal criminal laws under which the defendants in Thordarson were indicted are written in general terms and prohibit specific kinds of violent activity without regard to the status of ultimate objectives of the people who engage in the prohibited activity. Thus, the court concluded that the Enmons ruling is not applicable inasmuch as none of the Thordarson defendants was accused of extortion under the Hobbs Act. A federal court in Ohio reached the same conclusion three months earlier in United States v. Chambers, 515 F. Supp. 1 (N.D. Ohio, 1981), when it refused to exempt a union member from prosecution for destroying vehicles owned by an employer.

The Court of Appeals did state in a footnote, however, that the Enmons interpretation of the crime of extortion in the Hobbs Act should be extended to the extortion provisions in other federal statutes in order to insure uniformity and consistency. The court observed, nevertheless, that none of the defendants in Thordarson were accused of violating the extortion provisions of those statutes and, therefore, it was inappropriate to consider the scope of their extortion provisions in this case. Thordarson, 646 F.2d at 1328, n.9.

CONGRESS DID NOT INTEND TO APPLY THE HOBBS ACT TO LEGITIMATE COLLECTIVE BARGAINING DEMANDS.

Despite the courts' consistently narrow interpretation of the Enmons decision in these cases and others, each version of the recodification of the federal criminal laws considered by the Judiciary Committee has included a definition of the crime of extortion which, to some extent, would have overruled the Enmons case. Although S.462 is designed exclusively to reverse the Enmons decision, its roots are in the various criminal code bills considered since 1973.

In the context of revising the federal criminal code, members of the Judiciary Committee have repeatedly struggled with the definition of "extortion," in an effort to achieve a compromise between the competing interests who want to preserve the Enmons interpretation and those who wish to have it reversed. These struggles are described in an article which appears at 72 Northwestern University School of Law's Journal of Criminal Law and Criminology, 499, 510-519 (1981), copies of which have been provided to each member of the Subcommittee.

Sponsors of S.462 contend that the Enmons decision misinterpreted the intent of Congress when it passed the Hobbs Act in 1946. Accordingly, Senator Grassley contends that this legislation is simply intended to "leave no doubt as to congressional

intent in enacting the Hobbs Act." ___ Cong. Rec. S1072 (February 3, 1983) (daily ed.).

The Hobbs Act was Congress' response to the Supreme Court's decision in United States v. Local 807, 315 U.S. 521 (1942), which ruled that Section 2 of the Anti-Racketeering Act of 1934 did not forbid the exaction of money in the form of a wage demand, by use or threat of violence, from an employer for payment to a putative employee who performed no services for the money, but made a good faith tender of the services which he was willing to perform but which the employer rejected.

The Anti-Racketeering Act of 1934 proscribed, in connection with interstate commerce, the exaction of valuable consideration by force, violence or coercion, "not including, however, the payment of wages by a bona fide employer to a bona fide employee..." In Local 807, the Supreme Court held that this exception covered members of a New York City Teamsters union who, by violence or threats, exacted payments for themselves from out-of-town truckers in return for the unwanted and superfluous service of driving out-of-town trucks to and from the city. Teamsters members would lie in wait for the out-of-town trucks, and then demand payment from the owners and drivers in return for allowing the trucks to proceed into the city. The Teamsters sometimes drove the arriving trucks into the city, but in other instances the out-of-town truckers paid the fees but rejected the Teamsters' services and drove the trucks themselves. There was evidence in several cases that the Teamsters, having exacted their fees, disappeared without offering to perform any services at all. The Court held that the activities of the Teamsters were included within the wage exemption to the Anti-Racketeering Act, even though the work they performed was unneeded and unwanted, and in some cases their work was rejected.

The Court decided Local 807 on March 2, 1942. Hearings on three bills addressed in part to the Local 807 decision were held by a subcommittee of the House Judiciary Committee on April 2, 17, 20, 22, 24, 28, and May 1, 1942. Hearings before Subcommittee No. 3 of the Committee on the Judiciary on H.R. 5218, H.R. 6752, and H.R. 6872, 77th Cong., 2nd Sess. (1942) (hereafter cited as "Hearings"). At the conclusion of the hearings, Representative Hobbs defended his bill, H.R. 6872, but stated that he proposed to substitute a new bill for it.[1] His explanation for this substitute bill

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1 Representative Hobbs did introduce a new bill, H.R. 7067, 77th Cong., 2nd Sess. (1942), reported in H. Rep. No. 2176, 77th Cong., 2nd Sess. (1942).

expressed the abiding theme which runs throughout the history of the enactment of the Hobbs Act.

> . . . I wish to call your attention to the fact that the elements of the crime denounced by this bill are essentially the same as the elements of robbery or extortion. The only added element is interference with interstate commerce. In order to amplify and clarify, I am seriously considering a revision of H.R. 6872 so that it will denounce interference with interstate commerce by robbery or extortion in haec verba. Of course, the revised bill should include conspiracy and attempts to commit such a crime, but the essence would be interference with interstate commerce by robbery or extortion.
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> This wil is grounded upon the bedrock principle that crime is crime, no matter who commits it, and that robbery is robbery and extortion, extortion, whether the perpetrator has a union card in his pocket or not. [Hearings, 426-428].

Representative Hobbs reiterated this refrain in debate on the House floor in 1943 and 1945, stressing that the reach of the bill was limited to robbery and extortion in the conventional senses. 89 Cong. Rec. 3217 (1943); 91 Cong. Rec. 11900, 11912 (1945). "That is all we are shooting at. Those words have been construed a thousand times by the courts. Everybody knows what they mean." 91 Cong. Rec. 11912 (1945).

H.R. 32, which became the Hobbs Act, eliminated the wage exception that had been the basis for the Local 807 decision.[2] But, as frequently emphasized during the House debates, the limited effect of the bill was to shut off the possibility opened up by the Local 807 case, viz, that union members could use their protected status to exact payments from employers for imposed, unwanted, and superfluous services. As Congressman Hancock explained:

> This bill is designed simply to prevent both union members and nonunion people from making use of robbery and extortion under the guise of obtaining wages in the obstruction of interstate commerce. That is all it does.
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> [T]his bill is made necessary by the amazing decision of the Supreme Court in the case of the United States against Teamsters' Union 807, 3 years ago. That decision practically nullified the anti-racketeering bill of 1934... In effect the Supreme Court held that...members of the Teamsters' Union... were exempt from the provisions of that law when attempting by the use of force or the threat of violence to obtain wages for a job, whether they rendered any service or not. [91 Cong. Rec. 11900 (1945)].

By eliminating the wage exception to the Anti-Racketeering Act, the Hobbs

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[2] The Hobbs Act also eliminated the proviso in § 6 of the Anti-Racketeering Act of 1934: "That no court of the United States shall construe or apply any of the provisions of this Act in such manner as to impair, diminish, or in any manner affect the rights of bona-fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States." That proviso was one of the supports for the Local 807 decision (see 315 U.S., at 535) and it was eliminated to prevent reliance on that clause as a means of resuscitating the Local 807 decision. See, 91 Cong., Rec. 11912 (remarks of Rep. Hobbs) (1945).

Act did not, however, sweep within its reach violence which might occur during a strike to achieve legitimate collective-bargaining objectives. It was repeatedly emphasized in the debates that the bill did not "interfere in any way with any legitimate activity on the part of labor people or labor unions...."[3] Congressman Jennings Randolph, in responding to a question concerning the Act's coverage, made it clear that the Act "does not have a thing in the world to do with strikes." 91 Cong. Rec. 11912 (1945).

The theme that the use of wrongful means during a labor dispute, unconnected with a felonious intent to misappropriate property, does not constitute extortion was highlighted by Congressman Hobbs' forceful rejection of the idea that strike misconduct, as such, is extortionate:

> MR. MARCANTONIO. All right. In connection with a strike, if an incident occurs which involves--
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> MR. HOBBS. The gentleman need go no further. This bill does not cover strikes or any question relating to strikes.
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> MR. MARCANTONIO. That does not answer my point. My point is that an incident such as a simple assault which takes place in a strike could happen. Am I correct"
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> MR. HOBBS. Certainly.
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> MR. MARCANTONIO. That then could become extortion under the gentleman's bill, and that striker as well as his union officials could be charged with violation of sections of this bill.
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> MR. HOBBS. I disagree with that and deny it in toto. [89 Cong., Rec. 3213 (1943)]

Thus, it was the coerced payment for a rejected stand-by job, where no employment relationship existed and no services were rendered, which was the essential target of the Hobbs Act. It was to this mischief that Representative Hobbs directed his remarks when he stated that, "I want to make it perfectly clear that the sole and simple purpose, the single purpose, of this bill is to do the best we can to protect interstate commerce and free the highways and streets of this country of robbers." 91 Cong. Rec. 11912 (1945). The rhetoric employed by various Congressmen to express this objective was understandably imprecise, but the unifying theme of their concern was the exertion of actual or threatened violence to compel an employer to pay for nothing or very nearly nothing.

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3 91 Cong. Rec. 11908 (remarks of Rep. Sumners). See also, 91 Cong. Rec. 11900 (remarks of Rep. Hancock); 91 Cong. Rec. 11904 (remarks of Rep. Gwynne); 91 Cong. Rec. 11909 (remarks of Rep. Vursell) (1945).

MAJOR ACTS OF VIOLENCE ARE ALREADY PROHIBITED BY OTHER FEDERAL STATUTES.

For many members of this Subcommittee, the issue presented by S.462 may seem to be whether commission of major acts or threats of violence such as murder, kidnaping, arson and/or destruction of real and personal property by means of an explosive should be exempt from federal prosecution under the Hobbs Act simply because such violent activity occurs during the course of a legitimate labor dispute. That is not the issue, however.

The Enmons interpretation of extortion under the Hobbs Act does not give carte blanche to hooligans and racketeers to threaten, destroy, or injure others under the protective shield of a labor dispute. Those persons should be and are, prosecuted under state and federal law for whatever substantive crimes they commit.

For instance, several union officials and members were convicted of using explosives to damage and destroy vehicles and other personal and real property pursuant to 18 U.S.C. § 844(i) even though such acts occurred in the context of a labor dispute in United States v. Parker, 586 F.2d 422 (5th Cir. 1978). Similarly, members of a striking union were convicted of possession and use of a prohibited firearm (a bomb) to blow up trucks owned by a company doing business with their employer. Langel v. United States, 451 F.2d 957 (8th Cir. 1971).

In each of these cases, major acts of violence were successfully prosecuted under federal criminal laws which prohibit the specific acts committed without resorting to reliance upon the Hobbs Act. Thus, it is clear that there are federal statutes already on the books which expressly prohibit the gross acts and threats of violence which many supporters of S.462 claim must be addressed by redefining the crime of extortion in the Hobbs Act.

THE AFFIRMATIVE DEFENSE IN S.462 DOES NOT PRECLUDE PROSECUTION OF MINOR ACTS OF VIOLENCE.

The issue is not, therefore, whether major acts of violence should be punished, but whether the federal crime of extortion should be expanded to include violence committed during a legitimate labor dispute. If it is unnecessary to amend the Hobbs Act in order to permit federal prosecution of major acts and threats of violence which occur in the course of labor disputes, what then is the purpose of S.462? It appears that supporters of this bill are actually trying to give federal prosecutors a broad mandate to intervene in labor disputes, and to hold the threat of a felony indictment over the head of union participants in labor disputes.

The underlying concern of the Supreme Court in the Enmons case was that application of a federal extortion statute in the context of the collective bargaining process would transform minor acts of labor violence punishable by state law into federal felonies, thus placing the Federal Government in the business of policing the routine conduct of strike activity.

S.462 includes an affirmative defense that is supposed to meet the concerns which the Court expressed in Enmons. Subsection (d) states "that the defendant's conduct--(1) was incidental to peaceful picketing in the course of a legitimate labor dispute...; and (2) consisted solely of minor bodily injury, or minor damage to property not exceeding a value of $2,500, or a threat of such minor injury or damage; or (3) was not intended to extort property."

The "affirmative defense" in S.462 does not, however, ameliorate the concerns expressed in Enmons. Each of the three necessary elements of this defense is not only vague, but subject to interpretations which render it meaningless. Those three elements are: (1) "incidental to peaceful picketing"; (2) minor bodily injury, or minor damage; and (3) "in the course of a legitimate labor dispute."

First, the provision includes no definition of what is "incidental" and what is "peaceful": Is a threat or fear that the tires of the company president's car will be slashed by strikers "incidental"? If there are occasional outbreaks of fist fights along the picket line, is the picketing "peaceful"? Does the threat or fear of violence itself make a picket line not "peaceful"? In addition, the defense is limited to situations where "peaceful picketing" is underway. The defense would not apply where one or more individuals engage in covered conduct in connection with some legitimate employment objective, but not in the context of "peaceful picketing" underway at the time.

Second, the affirmative defense includes no definition of the word "minor." Moreover, even assuming we know what is "minor," the wording makes the issue turn not merely on what may actually be threatened by the union or employees but, in the alternative, on the employer's "feared injury." If the employer fears injury which is not "minor," the defense could be defeated. The employer's state of mind could thus govern the criminality of the conduct.

Both of these elements are required to make out the affirmative defense. Thus, conduct cannot qualify for the defense unless it is both "minor" and "incidental." Under this formulation, most misdemeanors, normally the subject of state criminal jurisdiction, which take place along a picket line, could be subject to federal prosecution.

The imaginary horrors found by the Court in Enmons could still come true under this provision: "the worker who threw a punch on a picket line, or the striker who deflated the tires on his employer's truck would be subject to a [federal] prosecution...." 410 U.S. at 410.

In addition, the entire defense may be interpreted as a Catch-22. If a number of threats (even though minor) are made in connection with picketing, a court may refuse to regard the picketing as peaceful, and therefore may refuse to recognize the affirmative defense.

Most importantly, as to the third element, the defense only applies to "legitimate labor disputes" as defined in secion 2(9) of the National Labor Relations Act, as amended. 29 U.S.C. § 152(9). This section of the NLRA defines the term "labor dispute," not "legitimate labor dispute." The latter term could be applied to distinguish inordinate union demands from those which are within a range of acceptability. The criminality of union conduct could, therefore, turn on an assessment by the prosecutor, the judge, or the jury, as to the reasonableness of the union's bargaining objectives. There should be no room for a jury to find criminal purpose in any union effort to obtain an increase in wages or other employee benefits through collective bargaining.

Finally, it must be understood that, because subsection (d) of S.462 is an affirmative defense, the burden of proof of these elements would be on the defendant. A prosecutor thus would almost always be able to get these issues--"minor," "incidental," "peaceful" and "legitimate"--to the jury. And, with respect to these elements, the prosecutor would not have to prove his case beyond a reasonable doubt; indeed, the burden of non-persuasion would not be upon the prosecution at all but upon the defendant.

EXPANSION OF FEDERAL JURISDICTION IS UNNECESSARY AND UNWISE.

S.462 would not only extend federal criminal jurisdiction into virtually every labor-management dispute and place federal prosecutors in the untenable position of taking sides in disputes, but would also disrupt the delicate balance already created by Congress in the labor-management relations area. Moreover, the risk of a federal indictment for extortion because of some minor labor-related misconduct would have a substantial chilling effect upon the exercise of workers' federally protected right to engage in concerted activities to improve their wages, hours and working conditions.

Congress, in addition to prohibiting specific criminal misconduct, has also

legislated that the use of violence in the course of collective bargaining to coerce an employer is an unfair labor practice under the National Labor Relations Act, 29 U.S.C. Sec. 151, et seq. (1976). Thus, if a union or its agents engage in volent activities, the National Labor Relations Board (NLRB) is authorized to proceed against the labor organization and the individuals involved. See, NLRB v. Nacional de Trabajadores, 540 F.2d 1 (1976), cert. denied, 429 U.S. 1039 (1977); NLRB v. Imperato Stevedoring Corp., 250 F.2d 297 (3d Cir. 1957); NLRB v. Furriers Joint Council, 224 F.2d 78 (2d Cir. 1955); Laura Modes Co., 144 NLRB 1592 (1963). Remedies available to the NLRB include the authority to issue orders to cease and desist from the specific unfair labor practices, require the offending union to post copies of a notice of the Board's determination at all union offices and meeting places, and even mail copies to all employees of the company involved, and publish copies of newspapers of general circulation in the locality where the violence occurred. NLRB v. Union Nacional de Trabajadores, 540 F.2d at 11-12; Texas Gulf Sulphur Co. v. NLRB, 463 F.2d 778, 779 (5th Cir. 1972); J.P. Stevens & Co. v. NLRB, 461 F.2d 490, 495 (4th Cir. 1972); J.P. Stevens & Co. v. NLRB, 417 F.2d 533, 538-40 (5th Cir. 1969); Alexander Stafford Corp., 118 NLRB 79, 82 (1957), enf'd sub nom, International Ass'n of Heat & Frost Insulators v. NLRB, 254 F.2d 955 (D.C. Cir. 1958). Where the coercive misconduct is especially serious, the Board can even decertify the union as the exclusive bargaining representative of the affected employer's employees. NLRB v. Union Nacional de Trabajadores, 540 F.2d at 13. See also, NLRB v. David Buttrick Co., 361 F.2d 300 (1st Cir. 1966); International Bhd. of Teamsters, Local 671, 199 NLRB 944 (1972); Hughes Tool Co., 104 NLRB 318 (1953).

In the interim, the Board has the power, upon issuance of an unfair labor practice complaint against a union or individual members, to seek an injunction against further violent misconduct. National Labor Relations Act, section 10(j), 29 U.S.C. section 160(j) (1976).

The National Labor Relations Act also provides that any finding by the Board of an unfair labor practice involving coercive misconduct is enforceable by the United States courts of appeals, sections 10(c) and (f), 29 U.S.C. sections 160(e) and (f) (1976). The Board can also seek civil and criminal contempt sanctions against respondents who refuse to comply with the courts' enforcement orders. See, e.g., NLRB v. Teamsters Local 327, 592 F.2d 921 (6th Cir. 1979).

In addition to the remedies provided by federal law, a number of remedies, both civil and criminal, are available under state law to victims of misconduct in the

course of a labor dispute. State and local law enforcement agencies have the principal responsibility for defining and prosecuting crimes. Accordingly, expansion of the crime of extortion in the Hobbs Act to apply to labor-related disputes would be an unprecedented intrusion into matters traditionally reserved to the states. Traditionally, Congress, for good reason, has been reluctant to expand federal criminal jurisdiction into criminal activities which states and local law enforcement agencies are adequately handling.

In fact, there is no evidence that current state and federal criminal statutes are inadequate to policy labor-related violence. For instance, the annual reports of the Federal Bureau of Investigation do not mention labor-related violence as a separate category of criminal activity, and the National Labor Relations Board does not tabulate which unfair labor practice cases involve violence. This indicates that labor-related violence is hardly a widespread or chronic problem which requires expansion of federal criminal jurisdiction. The survey of so-called "union-inspired violence" submitted by the National Right to Work Committee, which purports to demonstrate a need for federal action, is so severely flawed that time limits our ability to thoroughly refute it. However, the Building and Construction Trades Department intends to prepare a complete analysis of this survey for the Subcommittee's consideration.

There are also several civil remedies available under state law to victims of violence and coercion which occurs during labor disputes. State courts may enjoin violence and threatening activity, as well as award compensatory and punitive damages for the consequences of such actions. United Automobile Workers v. Anderson, 351 U.S. 959 (1956), aff'g per curiam, 245 Minn. 274, 72 N.W.2d 81 (1955); Allen-Bradley Local 1111 v. WERB, 315 U.S. 740 (1942); United Automobile Workers v. Russell, 356 U.S. 634 (1958); UMW Dist. 50 Constr. Workers v. Laburnum Constr. Co., 347 U.S. 656 (1954); Solo Cup Co. v. International Bhd. of Pulp, Sulphite & Paper Mill Workers, 237 Md. 611, 205 A.2d 213 (1964), cert. denied, 380 U.S. 976 (1965). In sum, there is no need to provide the Federal Government with an additional means of prosecuting such activity because an ample arsenal of weapons is already available to deter violence in the course of labor disputes. Available evidence does not indicate that there is a compelling need to expand the federal extortion statute to include violent misconduct in the course of legitimate labor disputes.

Furthermore, extension of the Hobbs Act to reach strike violence could overextend limited federal police resources. There are simply not enough federal law

enforcement officers to begin to police labor-related violence throughout the United States. Nor should the added burden upon an overworked federal court system be overlooked. Most importantly, however, is the impact which inadequate federal police resources would have on the evenhanded administration of justice. For if federal police resources are inadequate to monitor all labor-related violence, the inevitable consequence will be that federal law will be applied haphazardly, erratically, or invidiously. Enforcement will vary from situation to situation and from community to community, dependent upon the accident of the preoccupation, zeal, interest, or worse, of the local United States Attorney. That environment breeds arbitrary and erratic arrests and convictions. No statute is acceptable which unnecessarily commits matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Nonetheless, this is exactly what S.462 would cause.

S.462 would also create a gross double standard which would subject union members who become involved in labor-related violence to prosecution for extortion, but not employers and their agents who often instigate the violence in the first place.

For example, Great Coastal Express, Inc., a Virginia trucking company, was awarded damages of $967,000 against the International Brotherhood of Teamsters because a federal trial court found the union caused the destruction of trucks and other company property during a labor dispute which occurred ten years ago. The trial court, after conducting another hearing in 1979, found that several former Great Coastal employees had given false testimony during the original trial in 1971. At least one former employee testified in the 1979 hearing that he was told by his supervisors to shoot at his own truck, throw bricks, puncture tires, and give false testimony to the federal jury concerning those responsible for the property damage allegedly caused by the Teamsters. The appeals court remanded the case for retrial.

This case confirms what organized labor has long known, which is that much of the violence connected with labor disputes is manufactured by employers in an effort to discredit the labor movement. Nonetheless, such unlawful activity, even if proven to be caused by employers and their agents, would not be punished under S.462. The reason is simple. Under no circumstances would the purpose of such violence be to obtain the property of the union or its members, as required by S.462. As a result, regardless of the apparent intention of its drafters to apply the crime of extortion to both sides of a labor

dispute, as a practical matter, S.462 would only be used to prosecute union members and not employers and their agents.

This is especially important because, as I indicated earlier, violent misconduct by workers is often a reaction to employer provocation. The purpose of such provocative activity is either to discredit the workers' demands to break their morale, or to create a disorderly situation which requires the armed intervention of state or local law enforcement. S.462 would not prohibit such activity. In fact, S.613 would encourage provocative activities by employers because violence reactions by workers would be dealt with in an extremely severe and one-sided manner under its terms, but not the provocative actions which actually caused the violence.

S.462 ELIMINATES THE ELEMENT OF "FELONIOUS INTENT" FROM THE FEDERAL CRIME OF EXTORTION.

In addition to the important policy considerations which support our opposition to S.462, this bill is simply inconsistent with basic principles of criminal law. Extortion, at common law, under most state criminal statutes, and the current Hobbs Act, requires allegation and proof that there is an intent to misappropriate the property of another. This critical element of the crime of extortion is embraced in the Hobbs Act in the words "obtaining property from another," and "induced by wrongful use of actual or threatened force, violence or fear, or under color of official right." While the word "wrongful" in this definition literally precedes the description of the prohibited means, the Supreme Court ruled in the Enmons case that the concept of "wrongful" also attaches to the "obtaining of property from another."

S.462 would, however, eliminate the need to allege and prove a felonious intent to misappropriate the property of another in order to make out a prima facie case of extortion under federal law. Instead, subsection (a) of S.462 would simply require an allegation that "actual or threatened force, violence, or fear thereof, or wrongful use of fear not involving force or violence, or under color of official right" was used to "obtain...property from another."

Elimination of the word "wrongful" from the definition of extortion in S.462 would bring within its meaning all disputes concerning demands by workers and their unions to obtain higher wages and other monetary benefits from employers through collective bargaining. The Supreme Court held in Enmons that such demands cannot be characterized as misappropriation of another's property with felonious intent. Of course, an employer who pays wages and other benefits in exchange for work performed for him

is not having his property misappropriated. What he gives is the quid pro quo for what he gets.

An employer and a worker may disagree as to how much should be paid for his or her work. Violence by either party in the course of such a dispute is not a permissible means to break the deadlock between them. But such violence, if it occurs, is not extortionate because it is not aimed at misappropriating the property of the other. Fixing terms of employment is simply not misappropriation of property.

Apparently the draftsmen of S.462 recognized this proposition and simply sidestepped it by eliminating the need to prove a felonious intent to misappropriate the property of another. S.462 provides, instead, that violence or the fear or threat of violence, when used to obtain, but not misappropriate, the property of another, is, nevertheless, extortion.

Traditionally, the crime of extortion has been a larceny-type offense. It is not stealing to seek a collective bargining agreement which provides for higher wages and other monetoary benefits. Nonetheless, S.462 would alter the traditional character of extortion by eliminating the elements of felonious intent to misappropriate property of another simply to reach labor-related violence. This is, as a federal matter, unnecessary because there are ample federal, state and local laws, both criminal and civil, which are used to deal with the problem. Moreover, it is inadvisable as a matter of public policy, because the proposed expansion of federal jurisdiction is inconsistent with the National Labor Policy and the legitimate goal not to expand federal criminal jurisdiction absent a showing of compelling need.

CONCLUSION

What then is the purpose of S.462? It appears that its purpose is simply to harass labor unions and the workers they represent and make them reluctant to exercise their right to participate in lawful concerted activities such as picket lines and striking. The labor movement has never encouraged or condoned violence as a means of achieving its objectives, and it does not condone it now. Nevertheless, it does sometimes occur in the emotionally-charged setting of picket lines and strike situations. Under S.462, all violence by strikers--but not by employers or their agents--no matter how minor, would be swept within the scope of the Hobbs Act, including the worker who throws a punch on a picket line and the striker who deflates the tires of his employer's truck. All such activity would be subject to the same severe punishment.

The chilling effect on workers' protected right to participate in concerted activities which S.462 would have is unquestionable. For all these reasons, the Building and Construction Trades Department is opposed to S.462 and urges this Subcommittee to issue an unfavorable report concerning this unneeded, unwise and one-sided legislation.

STATEMENT

OF

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA

ON

S. 462 - A BILL TO AMEND THE HOBBS ACT

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

We are pleased to have this opportunity to offer the comments of the International Brotherhood of Teamsters on S. 462, a bill to amend the federal extortion statute, commonly referred to as the Hobbs Act. The International Brotherhood of Teamsters is a labor organization representing approximately two million working men and women and is deeply concerned with legislation that has an impact on the right to engage in collective bargaining and concerted activities in support of that right.

We are not unfamiliar with legislative proposals that purport to cure evils associated with the collective bargaining relationship but which are really aimed at destroying or weakening the effectiveness of the trade union movement. In one fell swoop, S. 462 turns the clock back to the pre-Wagner Act days of trial by combat. Surely, workers will be extremely hesitant to join a picket line knowing that any remark they or others make or act they commit, however provoked or thoughtless, could subject them to the severe penalties of the federal extortion law. Moreover, S. 462 is an unsubstantiated insult to the working men and women of this country who honor and obey the laws of this land. It is extremely painful for us to watch this legislation being considered as a result of the massive anti-union propaganda that has been manufacutred by professional million dollar union-busting organizations. It must be

pointed out that "most major business organizations have not joined the effort to [amend the Hobbs Act]. An official at one large business group conceded privately that picket line violence is not a high priority item or major problem for many companies". 1/

At the outset, though, it should not be necessary for us to repeat that neither this Union, its officers, nor the members, by opposing this legislation, seek to condone, justify, or endorse the use of violence by any party to a labor dispute. Our opposition to unnecessary federal encroachment in this area, traditionally reserved to the states, should not be so interpreted.

As noted by Chairman Mathias at the December 10, 1981 hearings of the Subcommittee on Criminal Law on S. 613, an analagous bill, "the central question presented by this legislation and before the Subcommittee today is whether or not the expansion of federal jurisdiction that is envisioned by S. 613 is justified by a sufficiently compelling federal interest." In essence then, the questions really are whether the supporters of S. 462 have established that:

1. labor violence is pervasive,
2. state and local law enforcement agencies have not been able to control this alleged violence,
3. existing federal laws are inadequate, and
4. the Federal Government is better able to deal with violent acts occurring at the local level than are the many local law enforcement agencies, without adversely affecting the ability of the Federal Government to pursue other high priority responsibilities.

Having reviewed the testimony already presented, it is clear that the anti-union supporters of this bill can not

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1/ Wall Street Journal, December 11, 1981, p. 12.

meet any of these criteria. Recognizing this difficulty, they have directed their efforts and ample financial resources to clouding the issues through the use of a publicity campaign that is best characterized by its absence of factual support.

Even if one ignores this obvious failure to provide any support for federal intervention in an area of police power that has traditionally been reserved for the states, the impact of the passage of S. 462 on the successful collective bargaining system adopted in this country would be devastating.

I.

S. 462 Will Return The Labor Policy Of The United States To The Pre-Wagner Act Days

Congress recognized almost fifty years ago that institutionalizing industrial conflict and defusing it through mandatory collective bargaining between employer and worker representatives was the best way to reduce industrial strife and the consequent disruption that occurred. As two outstanding experts in the field of labor relations have noted:

> The most important single cause of violence in labor disputes has been controversy over union recognition. The sharp decline in violence is attributed particularly to the Wagner Act (1935) and to procedures for representation election. 2/

As we will detail below, there is no statistical evidence to prove the contrary, because the Wagner Act and the model it set in place in the United States has worked effectively and continues to work with a minimum of violence.

S. 462 seeks to once again revive the early 1800's conspiratorial view of combinations of workers engaged in collective actions against employers. 3/ Worker participation

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2/ Bok and Dunlop, Labor and the American Community, 229 (1970); Cohen, Labor in the United States, 365 (1979).

3/ Commonwealth v. Pullis, Mayors Court of Philadelphia (1806)(Philadelphia Cordwainers' Case).

in strikes under S. 462 would become the subject of review by federal criminal enforcement agents. As in the early labor cases in this country:

> The stress of the prosecution [will be] upon the coercion incident to the activities and objects of the association . . . without distinction between whether they were effected by acts then recognized as unlawful (beating of strike-breakers) or by acts which were not (refusal of association). 4/

In other words, the acts and statements of workers, whether or not they are related to violent activities, become evidence in criminal investigations. Moreover, under the S. 462 scheme, workers will be subjected to dual prosecution for the same act - once at the state level and then again at the federal level.

Even though workers would be subjected to federal extortion prosecution, they could still be charged and prosecuted under the applicable state criminal statute for the specific act committed without violating the double jeopardy provision of the Constitution. 5/ Thus, the advocates of this legislation are creating a distinction that would result in a gross injustice to American workers, subjecting them to disproportionate federal penalties and state penalties for the same acts, merely because those acts occur during a legitimate labor dispute.

Justice Black, writing in the dissent in Bartkus v. Illinois, 359 U.S. 121, 151-156 (1959), argued:

> Fear and abhorrence of governmental power to try people twice for the same conduct is one of the oldest ideas found in western civilization . . . . Few principles have been more deeply 'rooted in the traditions and conscience of our people'. The Court apparently takes the position that a second trial for the same act is somehow less offensive if one of the trials is conducted by the Federal Government and the other by a state . . . .

4/ Nelles, The First American Labor Case, 41 Yale L.J. 165 (1931) (emphasis added).

5/ U.S. v. Wheeler, 435 U.S. 313 (1978).

> This, it seems to me, is a misuse and desecration of the concept [of federalism] . . . . I have been shown nothing in the history of our Union, in the writings of its founders or elsewhere, to indicate that individual rights deemed essential by both state and nation were to be lost through the combined operations of the two governments.

All of this and more is the result of what can only be termed as a perverse interpretation of the generally accepted concept of extortion. Defying belief, union busters have classified worker efforts to gain improved wages and benefits from employers as attempts to obtain the property of another by extortion if accompanied by any type of isolated nonrepetitive violence. Through this device, the Right to Work Committee attempts to secure their true singular goal of destroying unions. Thus, S. 462 is the vehicle used by the RTWC to align the government with management in a labor dispute. This is best illustrated by the fact that union, but not employer, violence is punishable under S. 462.

Since legitimate economic strikes by their nature are not extortionate, a perversion of the traditional extortion concept is required to make it applicable. S. 462 achieves such a perversion by defining worker attempts lawfully to increase their wages as attempts to take the property of the employer. However, since there is no "property" of the workers at stake, there can be no federal extortion prosecution for threats or acts of management in its attempts to break a strike or discourage union organizing. In such circumstances, management employees will be subject only to state criminal penalties, while workers could be prosecuted under state law and, at the same time, be subject to the much greater penalties under federal extortion law.

Moreover, S. 462 precludes uniform application of the laws. As applied to labor disputes which erupt into violent activity, S. 462 will protect only one class of property -

that belonging to employers. We recognize that the mere fact that the government would choose to apply a criminal statute to only one class of persons does not necessarily violate the equal protection concept embodied in the Fifth Amendment. 6/ However, a statute such as S. 462, which cannot by its terms be applied to all persons similarly situated, would deny to those persons prosecuted under the statute the uniform application of laws. 7/

In conclusion, as the Subcommittee on Criminal Law of the Judiciary Committee previously noted in its Report On The Criminal Justice Reform Act of 1975, "since there is no intent thereby to obtain the employer's property through the use of force and the acts do not in fact cause the employer to part with his property . . . such isolated acts of violence do not partake of the nature of extortion". (Report at 624) S. 462's rewrite of the law of extortion inevitably invites a return to the days when combinations of workers to raise wages were viewed as an unlawful conspiracy. Thus, the passage of S. 462 will cause labor relations in this country to return to a pre-Wagner Act atmosphere, similar to that presently occurring in Poland.

II.

There Is No Evidence To Support Expansion Of Federal Extortion Law

In order to gain a realistic perspective as to the severity of the alleged problem of labor violence in the context of legitimate collective bargaining, we asked our Research Department to conduct a search for all relevant statistics compiled by the various agencies of the Federal Government. We found that the statistics maintained on

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6/ United States v. Berrios, 501 F.2d 1207 (2d Cir. 1974); U.S. v. Cammisano, 546 F.2d 238 (8th Cir. 1976).

7/ Schlesinger v. Ballard, 419 U.S. 498 (1975); United States v. Cleveland, 503 F.2d 1067 (9th Cir. 1974); Yick Wo v. Hopkins, 118 U.S. 356 (1886).

labor-related violence were notable only by their absence. In addition, we discussed the question of labor violence and its alleged pervasiveness with representatives of major criminal law enforcement agencies. Similarly, we found no support for federal intervention in labor disputes based on the professional experience of these organizations.

A. There Is No Statistical Evidence To Support S. 462

The Department of Justice, through its Bureau of Justice Statistics, compiles the Source Book on Criminal Justice Statistics. In the most recent edition, for the year 1981, there are no statistics maintained on labor-related violence in any form. Similarly, the Federal Bureau of Investigation, in its annual uniform crime report, Crime in the United States 1981, does not mention labor-related violence in any of its statistics on crime. Furthermore, sources at the Labor Department Bureau of Labor Statistics and the Division of Information of the National Labor Relations Board indicate that no statistics are maintained on incidents involving labor violence.

In point of fact, the only Federal Government statistics that we could find with respect to labor-related violence in any form come from the annual report of the Bureau of Alcohol, Tobacco and Firearms in the publication Explosives Incidents 1981. In that publication, "labor related" is the described motive in 21 bombing and 15 incendiary bombing incidents (Tables 9 and 10), and 5 arson incidents (Table 27 in 1981) - a total of only 41 incidents in the country in one year, or 11 less than the prior year. These include all acts committed outside as well as within the context of a labor dispute for legitimate collective bargaining objectives. The characterization of "labor related" is usually only an assumption by the Bureau because the incident may have occurred at a time and place where a labor

dispute was in progress or suspected. However, the event could have been totally unrelated to the dispute.

It is important to keep in mind when considering these statistics that the term "labor related" includes the acts of both employers and employees. Lest anyone be led to believe that employers do not engage in threats and acts of violence to discourage union organizing efforts or for their own personal gain, we refer you to the recent findings of fact by a United States District Court in the case of Great Coastal Express v. International Brotherhood of Teamsters, 108 L.R.R.M. 2155 (E.D. Va. 1981) (memorandum of findings of fact dated August 27, 1981 attached). 8/ In this case, in 1972, Great Coastal Express was awarded a sum of $1,300,000.00 for damages during a labor dispute which had been marked by acts of violence allegedly committed by the members of the International Brotherhood of Teamsters during a labor dispute for legitimate collective bargaining objectives. On a motion to reopen the judgment based upon newly discovered evidence, the District Court found that not only had the employees of Great Coastal Express given false statements to authorities and committed perjury under oath at trial, but that they, under the direction of the management of Great Coastal Express, had actually committed the acts of violence and property destruction that were some of the bases of the suit.

In this regard, it should be noted that the efforts to amend the Hobbs Act to put workers in federal prisons for acts that occur during a legitimate labor dispute do not include elimination of the current disparity of treatment between workers and employer agents who commit similar acts. Union members are currently punished more severely than

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8/ Affirmed, 675 F.2d 1249 (4th Cir. 1982), cert. denied, 112 L.R.R.M. 2280 (1983).

strikebreakers. Union members are subject to a maximum fine of $10,000 or imprisonment for 20 years or both (18 U.S.C. § 1951); while strikebreakers cannot be fined more than $5,000 and imprisoned for more than two years, or both. 18 U.S.C. § 1231.

Getting back to our principal point, in view of the apparent lack of statistical verification for any significant problem of acts of violence occurring during collective bargaining, we find ourselves in a position of having to respond to the few incidents alleged by the supporters of legislation to amend the Hobbs Act as being of crisis proportions and requiring the attention of the Congress of the United States. Although we lack the capacity to investigate the facts of each incident, we would be happy to assist the Subcommittee staff in any way to respond to these allegations. Even without specific responses at this time, we would submit that a substantial number of the incidents alleged at these hearings were or will be dealt with at the state or local level with appropriate severity. In this regard, the excellent submission before the Subcommittee on Criminal Law in March of 1982 by Laurence Gold, Special Counsel for the AFL-CIO, analyzing the alleged incidents of violence, is very revealing. We further submit that though threats or acts of violence committed by workers are the convenient source of headlines, cases such the Great Coastal Express decision rarely are.

Although the lack of statistics on labor-related violence should provide some insight to the reality of the alleged problem, various law enforcement and prosecutorial authorities are another source of evidence as to the exaggerated claims made by advocates of Hobbs Act amendments.

B. Criminal Law Enforcement Organizations Do Not Support Federal Intervention

Our research concerning the position of key law en-

forcement agencies on the need for federal intervention in the labor violence area reflects the following:

1. The National Association of Attorneys General, in their resolutions on criminal code reform adopted in 1979, not only made no mention of a problem of labor-related violence in legitimate collective bargaining situations, but adopted a resolution in opposition to the expansion of federal criminal jurisdiction for statutes such as the Hobbs Act. This opposition was reaffirmed by the Association in recent testimony before the Senate Judiciary Committee.

2. Spokesmen for the National District Attorneys Association, the International Association of Chiefs of Police, and the National Sheriff's Association represented to us that none of their organizations had adopted any statement describing labor-related violence in legitimate collective bargaining as a problem.

3. The Final Report of the Attorney General's Task Force on Violent Crime, issued August 17, 1981, did not mention labor-related violence or expansion of the Hobbs Act to legitimate collective bargaining situations in its "final recommendations on ways in which the Federal Government can improve its efforts to combat violent crime without limiting its efforts against organized and white collar crime." 9/

4. During testimony on December 14, 1981 before the House Subcommittee on Criminal Justice concerning revision of the federal criminal code, Chairman Conyers asked a spokesman for the Federal Public and Community Defenders whether there was a disinclination by local law enforcement officials to get involved in labor dispute violence. The spokesman responded that to the contrary, such cases are "vigorously prosecuted".

9/ Letter of transmittal from the Attorney General's Task Force on Violent Crime to the Attorney General, Final Report August 17, 1981 of the Attorney General's Task Force on Violent Crime, page iii.

In conclusion on this point, we maintain that the statements made by advocates of expansion of the Hobbs Act are exaggerations and gross misrepresentations of the truth. There were 145 work stoppages (16,908,000 man days idle) in 1981, and 96 work stoppages (9,061,000 man days idle) in 1982 [10/] and 7,512 NLRB certification elections in 1981 [11/] in the United States. Added to the approximately 2000 major collective bargaining agreements (agreements involving more than 1000 employees) that the Bureau of Labor Statistics has on file that are renegotiated over a three year period [12/] (and a great many more agreements involving fewer workers), the country is always confronted with a substantial number of potential and actual labor disputes for legitimate collective bargaining objectives. To cite a small number of well-publicized incidents of threats or acts of violence in these situations as indicative of a nationwide campaign of violence or industrial terrorism is a disservice to the working people of this country and the truth.

III.

Existing Federal And State Laws Provide Adequate Remedies For Misconduct During Labor Disputes

One of the basic principles of justice is that duplicate enforcement of federal and state laws dealing with the same subject should be avoided. [13/] In light of that sound goal, it should be noted that strike-related violence by employees or unions is now subject to punishment by state

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10/ "Analysis of Work Stoppages", 1980 and 1981, Bureau of Labor Statistics. This only includes stoppages involving 1000 or more employees. Many work stoppages involve far less, for example in 1981 there were 2577 work stoppages involving six or more employees.

11/ Division of Information, National Labor Relations Board.

12/ Bureau of Labor Statistics.

13/ Petite v. United States, 361 U.S. 529 (1960).

and local authorities. Indeed, every single wrong that would be made a federal crime by S. 462 is already a crime under state or local laws today. Thus, expanding the Hobbs Act will not close any enforcement gaps left open by either state or local laws.

S. 462 would confer federal jurisdiction over every case of assault or property destruction which is associated in any way, shape or form with otherwise protected strike activity. Yet there already exists a substantial body of federal law to deal with labor violence. First, it must be pointed out that Enmons does not foreclose prosecution of all extortionate acts simply because they occur in the labor dispute context. Truly extortionate conduct in the form of threatened force or violence against an employer in order to obtain personal payoffs or to exact "wage" payments in return for unwanted, superfluous, or fictitious services are well within the ambit of the current Hobbs Act. 14/

Second, Congress has already legislated that misconduct can be the subject of unfair labor practices under the Labor Management Relations Act. If a union or its agents engage in strike-related misconduct, the NLRB will institute proceedings against the individuals and organizations involved. 15/

14/ United States v. Green, 350 U.S. 415 (1955).

15/ The NLRB has long recognized that strike-related misconduct by agents of a union has a coercive effect on employees and violates Section 8(b)(1)(A) of the Labor Management Relations Act, 29 U.S.C. § 158(b)(1)(A). Rockville Nursing Center, 193 N.L.R.B. 959 (1971); Steelworkers Local 586 (Inspiration Consol. Copper Co., 174 N.L.R.B. 189 (1969); Vera Ladies Belt & Novelty Corp., 156 N.L.R.B. 291 (1965). Section 8(b)(1)(A) makes it an unfair labor practice "to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title . . . ." The acts of violence or threats thereof may be against an employee Union Nacional de Trabajadores (Catalytic Indus. Maintenance Co., Inc.), 219 N.L.R.B. 414 (1975), enf'd, 540 F.2d 1 (1st Cir. 1976); Steelworkers, Local 586, supra, 174 N.L.R.B. at 189, or an employer, Laura Modes Co., 144 N.L.R.B. 1592 (1963). The NLRB has the authority to issue a cease and desist order which is enforceable in the U.S. Courts of Appeals.

Any finding of such violations is enforceable in the Courts of Appeals. Repeated violations can result in the NLRB seeking civil and criminal contempt sanctions against the offenders. If the misconduct is serious enough, the NLRB will even deny bargaining rights to the union involved. 16/ The remedies already provided by federal law are, we submit, sufficient. Any intrusion of federal criminal law into legitimate strike situations will severely disrupt the balance already achieved by Congress in the labor-management relations area.

Third, a 1981 decision of the U.S. Court of Appeals in San Francisco graphically demonstrates the availability of other federal criminal provisions to deal with violence. In U.S. v. Thordarson, 646 F.2d 1323 (1981), cert. denied, 454 U.S. 1055 (1981), the court reinstated a federal indictment under the Explosives Act, 18 U.S.C. § 844, and the Travel Act, 18 U.S. § 1952, involving the use of explosives to damage vehicles used in interstate commerce. Furthermore, the RICO statute, 18 U.S.C. § 1962, is also available where extortion is used to illegally acquire or maintain any interest or control in any enterprise through illegal means. 17/

Finally, there is an extensive body of state criminal and civil laws dealing with extortion, assault, battery, destruction of property and arson. The states are not preempted by the labor laws when the matter involves the traditional power of the state to preserve the peace. State

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16/ Even though the Union has won an NLRB-conducted election to represent the employer's employees, the NLRB will revoke the certification if the union engages in serious acts of misconduct. Union Nacional de Trabajadores (Carborundum Co.), 219 N.L.R.B. 862 (1975), enf'd sub nom, NLRB v. Union Nacional de Trabajadores, 540 F.2d 1 (Ist Cir. 1976). In a less drastic case, the NLRB ordered a new election. Laura Modes Co., supra, 144 N.L.R.B. at 1596.

17/ Blakey and Goldstock, On The Waterfront: RICO And Labor Racketeering, 17 Am. Crim. L. Rev. 341, 358 (Winter 1980).

courts may enjoin violence and threatening activity, as well as award compensatory and punitive damages for the consequences of such actions. 18/

Given this ample body of state law and the present budgetary crisis faced by federal agencies, who are already at "wits end" trying to meet existing responsibilities, the proper role for the Federal Government in local level criminal law enforcement should be a limited one. As the Attorney General's Task Force on Violent Crime noted:

> We do not believe that the federal government should direct or subsidize the ongoing operations of state and local criminal justice systems or should supercede those systems with a national police or court or correctional system. But we do believe that by providing useful services, national perspectives, and financial assistance for specific important purposes, the federal government can do much to improve the coordinated federal-state-local fight against serious crime. [p. 60]

Such an approach clearly falls within the Administration's new federalism doctrine. A spokesman for the Administration noted:

> "*** [W]e would hope to clearly define the role of the federal government, a role which has been somewhat diffused over the past ten years, as to its responsibility for the crime problem. The federal government to be sure has a role, but that role is a limited one and it should be recognized as a limited one. The principal responsibility for the control of crime, particularly the kind of crime that affects most citizens - the robberies, the burglaries, the murders - are the responsibility of state and local governments." 19/

IV.

Objections To S. 462 As Drafted

While we oppose the amendment of the Hobbs Act as a

18/ United Automobile Workers v. Anderson, 351 U.S. 959 (1956); Allen-Bradley Local 1111 v. WERB, 315 U.S. 740 (1942); United Automobile Workers v. Russell, 356 U.S. 634 (1958); UMW Dist. 50 Constr. Workers v. Laburnum Constr. Co., 347 U.S. 656 (1954).

19/ Edwin Meese, Counselor to President Reagan, Remarks Before American Bar Association, New Orleans, Louisiana, August 11, 1981.

general matter, we are specifically opposed to S. 462 for numerous reasons. As currently drafted, the affirmative defense provisions of S. 462 do not provide protection for legitimate labor activities. More importantly, S. 462 creates more lawyer's questions than it resolves by virtue of its vague terms.

S. 462 begins with the basic proposition that legitimate labor activities, such as striking for increased wages, can be the subject of extortion prosecution in that striking for such wages is a taking of the property of an employer and; therefore, any violent activity that occurs during a legitimate strike will be extortionate. (S. 462 Subsection (b)(2) and (c)(2)) This effort to fit a square peg into a round hole will lead to a statutory construction morass. S. 462 creates the following problems:

1. The device of an affirmative defense to limit the application of the Hobbs Act places the burden of establishing the lack of federal jurisdiction on the union member and will chill the exercise of protected rights under the First Amendment and National Labor Relations Act.

   Since an affirmative defense is not raised until after the union member is arrested and indicted, the objective of chilling the exercise of the right to strike will have already been achieved even before the defense can be raised.

2. Subsection (d)(1)'s requirement that the actor's conduct be "incidental to peaceful picketing" introduces a vague nexus requirement.

   In requiring that the actor's conduct be "incidental" to the labor dispute activity, S. 462 introduces tremendous problems concerning the location, timing and substantive relationship of the conduct to the legitimate labor activity. Given the vagueness of this language, it is difficult to discern if activities that occur before formal announcement of a strike, removed from the em-

ployer's primary premises, or acts that occur during the organizing period of strike activity would be covered by the affirmative defense provision. In short, Subsection (d)(1) attempts to introduce an ill-defined nexus requirement to activity that is varied both in time and in the form it is used, depending on the employer, the industry and the otherwise protected activities of the members involved.

3. Subsection (d)(1)'s requirement that the actor's conduct occurred "in the course of a legitimate labor dispute", will necessitate a determination that the underlying labor dispute meets all the requirements of the National Labor Relations Act.

For example, if a Local Union engages in area standards picketing, which is protected by the National Labor Relations Act, and the picketing is later determined to be violative of § 8(b)(7)(C) of the National Labor Relations Act because it had a proscribed recognitional or organizational objective, acts that occurred during that labor dispute could be found to be a violation of the Hobbs Act. The use of the word "legitimate" forces employees to second guess what the NLRB and the courts will later say about their concerted activity. Furthermore, it will enmesh criminal prosecutions in the highly technical area of secondary boycott determinations, which will infringe upon the expertise and jurisdiction of the NLRB. The word "legitimate" could be used as the justification for evaluating the substantive merits of the workers' wage and/or benefit demand. Conceivably, as currently drafted, a high wage demand could be viewed as "illegitimate", thereby precluding invoking of the affirmative defense

provision. "Legitimate labor dispute" is not defined in Section 2 of the National Labor Relations Act. What is defined by the NLRA is merely "labor dispute" in § 29 U.S.C. 152(9).

4. Subsection (d)(2) does not define what "minor bodily injury" is.

Since "minor bodily injury" is not defined, this vagueness in S. 462 will permit varied results and lead to abuses.

5. Subsection (d)(3)'s provision that conduct that "was not intended to extort property" is exempt from the coverage of the Hobbs Act, introduces a vague state of mind and/or intent requirement.

Absent a definition of the intent required, a striking worker is not put on notice as to what conduct is proscribed by the Act. Furthermore, it is difficult to understand, as noted previously, how a worker's protesting the wages and/or benefits of an employer and the occurrence of incidental violence could be the basis of a finding that the worker intended to extort the property of the employer.

V.

The Statistical Data Submitted By The National Right To Work Committee Grossly Overstates The Number Of Alleged Incidents Of Labor Violence And Is Lacking In Any Standard Of Credibility

Having reviewed the statistical data the National Right to Work Committee introduced to support their conclusion that labor violence is pervasive, one can only conclude that the RTWC has intentionally inflated their statistics in an attempt to mislead members of the Subcommittee. No information has been provided to enable one to decipher the methodology in order to evaluate the accuracy and reliability of the data base, as well as the conclusion drawn from that information. Our review clearly indicates that the data submitted to the Subcommittee is inherently un-

reliable and grossly inflates the aggregate number of alleged incidents. Our limited review of the data disclosed the following serious problems:

1. Not only is there duplication, in that one incident may be reported as two episodes of "labor violence," but the data in some cases reflects that one incident has, in fact, been reported as sixteen (16) different incidents of "labor violence."
2. The data fails to follow-up on the reported incidents in order to reflect whether, in fact, state and/or local officials arrested, prosecuted, and/or convicted the individuals accused of the misconduct.
3. In some cases, the source of the information is acknowledged to be unknown.
4. Numerous articles do not specify the date of the alleged violent acts.
5. The same incident is reported numerous times but listed as a separate incident of violence because it has been reported by more than one newspaper.
6. The data of the RTWC reflects that in many cases, union picketers were the subject of unprovoked attacks by company employees and agents.
7. Much of the data does not establish that there was any nexus with labor activity. In fact, in some cases, it appears that the violence was unrelated to labor activity.
8. In his statement before the Subcommittee, Mr. Larson stated that the data supported the proposition that "union-inspired violence" was rampant. Having made that assertion, the RTWC failed to present "evidence" that any of the reported incidents were "union-inspired".

9. While it appears that the information was collected from other files, the source documents for the raw data are not identified.

We invite the members of the Subcommittee to analyze the so-called "evidence" of the RTWC. It is appalling that the RTWC would introduce such faulty data, lacking in any statistical verification. In order to meaningfully evaluate this "evidence," however, an official of the RTWC must explain the source of the information, the method for collection and retrieval of information, and the instructions given to the computer, as well as a summary of the variables and/or criteria that are included in the computer printout. We respectfully request that we be given an opportunity to participate in such a discussion to determine the basis of this "evidence" and establish the true dimensions of labor violence in the United States.

Conclusion

In conclusion, we must reiterate our strong objection to S. 462. After a first reading of this proposed legislation, it becomes painfully clear that the true motive of the supporters is not to guarantee symmetry in the laws but rather to weaken unions. This conclusion is amply supported by the absence of evidence establishing that labor violence is pervasive, the existence of effective federal and state criminal laws already on the books, the uniform lack of support for the concept of federal intervention in labor violence by any law enforcement association, and the one-sided nature of the bill. Given these facts, it is most troubling to find that <u>any</u> consideration is being given to a bill that will work such a fundamental change in the labor policy of this country.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

GREAT COASTAL EXPRESS, INC., Plaintiff,	)	
	)	Civil Action No.
v.	)	
	)	5-71-R
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Defendant.	)	

MEMORANDUM

On the date of June 20, 1972, a jury returned a verdict in favor of the instant plaintiff against the defendant in the sum of $1,300,000.00.

On November 22, 1972, the verdict of the jury as to the amount of damages was set aside, and a new trial ordered, limited to damages. On April 20, 1973, at the conclusion of the trial on damages, the jury returned a verdict in favor of the plaintiff in the sum of $806,093.00. Judgment was entered in accordance therewith, and on appeal, taken by the defendant, the matter was affirmed by the United States Court of Appeals for the Fourth Circuit in an opinion filed April 2, 1975. Thereafter, on December 14, 1978, the defendant filed a motion to set aside the judgment, alleging that the ". . . plaintiff has perpetrated a fraud on this Court, the United States Court of Appeals for the Fourth Circuit and the National Labor Relations Board, causing its own equipment and the equipment of other trucking companies to be damaged by its own employees, and attributing these acts of violence to members of IBT affiliates"; and that ". . . the above-described fabricated acts have culminated in a judgment against the IBT. . . ."

Following extensive discovery proceedings, an evidentiary hearing was held on the union's motion on July 12 and 13, 1979. Thereafter, the Court entered an order denying numerous motions. The union appealed, seeking reversal of the Court's ruling, and thereafter, the United States Court of Appeals remanded the case to this Court with the direction that the Court supplement the record by findings of fact derived from the evidentiary hearing which had been held.

Pursuant to those directions, the Court makes the following findings of fact, incorporating therein, to the end that the Court's findings be read in their

appropriate context, reference to certain of the prior proceedings.

At the evidentiary hearing upon the union's motion to set aside judgment for alleged fraud upon the Court, the union presented nine witnesses: (1) Robert G. Seward, a driver for Great Coastal during the strike; (2) Betty Seward, Robert Seward's wife; (3) William P. Funai, Great Coastal's Terminal Manager during the strike; (4) William Stagg, Jr., Great Coastal's Assistant Terminal Manager during the strike; (5) John Martini, a Great Coastal driver during the strike; (6) Samuel Rogers, a Great Coastal driver during the strike, presently employed by Great Coastal; (7) Mack Fifer, a Great Coastal driver during the strike, presently employed by Great Coastal; (8) Edmond Christian Nuckols, Jr., a Great Coastal employee during the strike; and (9) Carmello Thomas Tuminello, Supervisor and Dispatcher for Adley Express during the strike.

No witnesses were called on behalf of the plaintiff.

Charles E. Estes is presently President and owner of Great Coastal, and held those same positions during the strike. During the strike, William P. Funai, the Terminal Manager of Great Coastal, routinely reported any damage of Great Coastal equipment to Estes. Estes personally negotiated the profit-sharing arrangements between key managerial employees and Great Coastal. Funai was a key managerial employee who had direct supervision over the drivers, with the right to hire and fire drivers. Funai described himself as "the boss" of the terminal; a fact which corroborated the testimony of Seward. The drivers took their instructions directly from Funai, and Funai took his instructions directly from Mr. Estes. Funai was on profit-sharing during the strike, a status reserved by the company for managerial personnel. Funai, according to Great Coastal, was entitled to 2% of all Great Coastal profits in excess of $100,000.00 by virtue of his status as a manager; in fact, he received $12,024.22 as his prorated share of the IBT judgment.

Edward L. Flinn was manager of Great Coastal during the strike, and is presently a manager with the company. As a manager, Flinn, according to Great Coastal, was on profit-sharing during the strike, and was entitled to 2% of all of Great Coastal's profits in excess of $100,000.00. Flinn received $12,731.12 as his prorated share of the IBT judgment.

Robert Williams was Great Coastal's maintenance supervisor and shop foreman during the strike, a position which he presently holds. Williams was part of Great Coastal's management during the strike and was entitled to 2% of all

Great Coastal profits in excess of $100,000.00. Williams received $12,822.69 as his share of the IBT judgment.

One morning during the strike William Stagg, Assistant Terminal Manager of Great Coastal, was told by C.E. Estes that he wanted to see Great Coastal's Terminal Manager, William Funai. Stagg, in turn, told Funai, who was at his desk adjacent to Stagg's, that Estes wanted to see him. In response to the message, Funai went directly to the second floor where Estes' office was located. In approximately ten to fifteen minutes, Funai came down the stairs and immediately told Stagg to get the pickup truck and go to Belk Floor Covering to relieve Robert Seward. Stagg had never before been asked to relieve any drivers during the strike and it was "very unusual" that the request was made in this instance inasmuch as other drivers were idle and available. Nevertheless, in accordance with Funai's instructions, Stagg got in the company pickup truck, and drove to Belk Floor Covering.

On that day, October 23, 1970, Robert Seward was unloading a truck at Belk Floor Covering in the City of Richmond when he was instructed by Stagg to go back to the terminal. Seward got in the pickup truck left by Stagg and went back to the terminal while Stagg finished unloading the trailer at Belk Floor Covering.

Seward went directly to the terminal office and reported to his boss, William Funai, who ordered Seward to get a brick or a rock, to take a truck to West Point, to break out the windshield of the truck and to "tear it up some". Funai and Seward discussed the fact that Seward was "going to break up the truck", was going to "shoot the truck" with a gun, and that Seward should wear gloves because "there might be fingerprints".

As instructed, Seward got a half brick off of the Great Coastal yard and drove a Great Coastal truck to Route 33 off Interstate 64, past New Kent, and pulled off the road. Seward, wearing gloves in an effort to avoid fingerprints, threw the brick at the windshield on the passenger side three times; the brick bounced off the windshield the first two times, but on the third blow crashed through its center. He then fired three shots into the front of the Great Coastal trailer using a small handgun - a cheap .22 caliber "Saturday Night Special".

Seward then proceeded on Route 33 to Green's Restaurant, called the terminal and spoke with Ed Flinn, but rather than tell Flinn the truth, Seward told a contrived story to the effect that unidentified persons had sabotaged the truck.

Thereafter, the police arrived and Seward took the officer down the road to a point where a high bank rises from the highway and then levels off into the woods. Although that was not where Seward in fact had inflicted the damage, Seward, in telling his lie to the police, designated that as the place where a brick had been thrown at the windshield of his truck, where he heard gunshots, and where he saw men running from the bank away from the road through the woods. Later that same day Stagg and the employees at the terminal learned that Seward's tractor windshield had been knocked out and his trailer had been "shot up".

Seward executed a false affidavit concerning the New Kent incident, identified as IBT Exhibit 3. That affidavit was witnessed by Edward L. Flinn, and was specifically incorporated in Great Coastal's answer to IBT Interrogatory No. 14 as "direct evidence of specific instances of violence, intimidation and secondary boycotting activities which are recorded in written statements attached hereto". Great Coastal's answers to IBT's interrogatories were executed under oath by E.C. Estes, Great Coastal's President, and filed with this Court on March 25, 1971.

Seward gave a false affidavit concerning the New Kent incident, identified as IBT Exhibit 4, to a representative of the National Labor Relations Board. Seward also testified falsely about the New Kent incident in a proceeding before the National Labor Relations Board.

Seward was called as a witness for Great Coastal at the trial before this Court on June 15, 1972. He falsely testified that he was driving toward New Kent in October 1970 when a brick came through the windshield on the passenger side, and that he saw men running away through the woods. Seward admitted at the hearing in July, 1979 that he gave perjured testimony before this Court in 1972.

William P. Funai was called as a witness for Great Coastal at the trial before this Court on June 15, 1972 and testified that during the strike he went to West Point, Virginia to look at a Great Coastal truck and saw "[t]he front windshield was broken on it" and there was "a small hole" in the trailer which looked like it was caused by "a shot, a small caliber gun". When asked in 1972 whether he "saw anybody do anything to that truck", Funai answered, "I seen the damage . . . and nothing else". Funai now concedes that he failed to "tell the truth, the whole truth, and nothing but the truth" in his 1972 testimony; he admits that he failed to tell everything he knew about the New Kent incident to the Court and he therefore violated his sworn oath before this Court. When Funai asked whether he

told Seward to sabotage his equipment, Funai refused to answer "on the grounds that the answer may tend to incriminate me".

The Court's conclusion as to Seward's having testified falsely at the first trial is made independent of Funai's exercise of his right against self-incrimination.

Edward Flinn is presently manager at Great Coastal and was also manager at the company during the strike. Some time in 1978 Robert Seward spoke with Ed Flinn at the Great Coastal terminal and told Flinn the truth about the New Kent incident. Flinn stated to Seward that at one time he, Flinn, was trying to trace down the New Kent incident, but someone told Flinn to "lay off" because he was "getting close to something in his investigation". The Court's finding in this regard is admittedly prompted by the absence of any testimonial denial on the part of the plaintiff.

When Local 592 struck Great Coastal in 1970, Adley Express, a trucking company in the Richmond area, enjoyed a greater demand for its services and began hiring extra roadmen who were out on strike against Great Coastal. After the strike began, Ed Flinn, manager of Great Coastal, placed a telephone call to Carmello Thomas Tuminello, dispatcher at Adley. Flinn wanted to know who was in charge at the time, and Tuminello responded that he was. Flinn said, "I'd like to see if you could do us a favor" and asked if Adley was "running any extra road drivers that are out on strike that work at Great Coastal". When Tuminello responded that Adley was running six or seven of them every night, Flinn asked if Adley "could stop running the roadmen on the road, so we could starve the sons of bitches out and make them come back to work at Great Coastal". Flinn went on to say that this would help Great Coastal "get rid of the union". Tuminello told Flinn that his boss, the terminal manager, who was not there at that moment, said the men were qualified drivers, Adley needed extra men, and he would continue to run them until he had further notice from his own boss.

During the strike Seward was ordered by Funai to go to Adley and East Coast to "punch tires and tear up trucks" [Tr. 40, 95 (Seward)]. Funai handed three "punches" to Seward that were prepared in Great Coastal's maintenance shop and sent him to a motel in Richmond to wait for the other members of the "raiding" party.

That night Seward was met at the motel by three other Great Coastal employees, Sam Rogers, Mack Fifer and Chris Nuckols, and together, upon orders

from Funai, they went on a "raid" to Adley, driving to Adley in Nuckols' car. Seward, Rogers and Nuckols punctured tires while Fifer slashed the air hoses off the Adley trucks. Tuminello spotted the four marauders under the Adley trucks while making a yard check, but by the time he returned with assistance, all he found were punctured tires and slashed air lines on the Adley equipment. Tuminello noted that one was wearing a Great Coastal jacket and later recalled the identity of one of them as "Seward".

Thereafter, similar acts of vandalism were conducted by Seward and Nuckols at the East Coast Freight yard. Seward was corroborated in regard to these acts by several witnesses.

During the strike Funai asked Seward to shoot the windows out of the Great Coastal office with an old double barrel shotgun. Seward declined because there were pickets nearby and the police were also in the vicinity.

Also during the strike, Funai instructed Seward and Chris Nuckols to purchase a slingshot for the purpose of breaking truck windshields. The testimony of Seward in this regard is corroborated by Nuckols. Seward and Nuckols purchased a slingshot from a sporting goods store, and Seward was with Funai, the Terminal Manager, when Funai submitted a ticket to Great Coastal petty cash for reimbursement of the slingshot. Seward and Nuckols tried to use the slingshot in the Great Coastal yard to break the windshield of Great Coastal trucks, but their efforts were to no avail because the shot could not be propelled with sufficient force to damage the windshield glass.

During the strike Martini heard Estes and Flinn express their appreciation to the drivers for their "irritation and agitation" of the pickets. Martini also heard Estes and other officers of Great Coastal express appreciation when Great Coastal trucks would come in damaged. In response to an inquiry from the Court on the attitude of Great Coastal managers about damage to the trucks, Martini testified that when damaged equipment came into the terminal, these officials would say words to the effect that, "this is what we need".

On November 24, 1971, as a result of an election, the National Labor Relations Board decertified Local 592 as representative of the Great Coastal employees. Seward had, at the request of a Great Coastal manager, been active in seeking the decertification of the union.

Within three weeks of Great Coastal's elimination of the union, Estes called Seward into his office and handed Seward $500.00 in cash. At that time,

Estes said to Seward, "keep it to [your] self", and told Seward he could "call it a Christmas bonus or pay for a job well done". This $500.00 payment is no where reflected on the company's books and records. Certain of the company's records for the relevant time period have been destroyed, but Great Coastal's custodian of records has no recollection of the circumstances underlying the destruction of those documents.

Emmett Williamson, Great Coastal's Treasurer and General Manager, testified that during the strike each "managerial" employee who was on profit-sharing with Great Coastal was "reassured by the company that he would receive his agreed percentage of profits if the company were later to recover damages from the union".

Notwithstanding the company policy that a manager on profit-sharing must have been with Great Coastal at the time of recovery against the IBT, William P. Funai, in July 1976 - more than five years after Funai had left the employ of Great Coastal - received $12,024.22 ($8,927.99 net after-tax dollars) as his share of Great Coastal's recovery against the IBT.

The Court is satisfied and finds as a fact that much of the testimony offered by the plaintiff in the first trial dealing with the alleged acts of violence by the defendant was perjured.

Just as the perjurors are, regrettably, free from prosecution for perjury by virtue of the statute of limitations, the one year limitation precludes the instant defendant from relief under Rule 60(b)(3) for the reasons stated in the Court's memorandum of February 29, 1980.

Let the Clerk send copies of this memorandum to all counsel of record, and return the records in this cause, along with this memorandum, to the United States Court of Appeals for the Fourth Circuit for such action as it may deem appropriate.

UNITED STATES DISTRICT JUDGE

Date: AUG 27 1981

Statement of Michael J. Tate Director of Security for American Petrofina, Incorporated Dallas, Texas Before the Separation of Powers Subcommittee of the Senate Committee on Judiciary, on S. 462, a bill to amend the Hobbs Act (18 U.S.C. § 1951)

March 31, 1983

My name is Michael J. Tate, Director of Security of American Petrofina, Incorporated. By way of background, I am a former FBI agent, have a Bachelor of Science in Criminal Justice, and recently lectured at the American Society for Industrial Security's 5th Annual Conference.

In the capacity of Director of Security, I became involved in a labor dispute between American Petrofina, Incorporated ("Fina") and the Oil, Chemical and Atomics ("OCAW") Local #4-23. This dispute involved a contract covering the Port Arthur, Texas refinery. The strike began in January of 1982 and ended eleven months later in December 1982. This strike contained the usual amount of picket line violence, i.e., throwing tacks, abusive language and slashed tires. There were, however, incidents of bricks thrown through car windows, terrorist threats and the shooting of one of the Fina employees.

On February 20, 1982, employee Leo Max Hildabridle, a striking member of OCAW Local #4-23, threatened to do bodily harm with a knife to Roland Mendoza, Security Manager of the Port Arthur refinery and Tommy R. King, Fina Security Investigator. This matter was referred to the local police and Hildabridle was arrested on April 19, 1982. The company terminated Hildabridle on May 27, 1982. In September 1982, Hildabridle was elected First Vice Chairman of OCAW Local #4-23. Each member of the union now pays a $5 monthly assessment to support Hildabridle.

On August 5, 1982, an article appeared in the Port Arthur News which voiced the Jefferson County Judiciary's support of OCAW #4-23's position in the labor dispute and solicited support from the members of the community.

On September 22, 1982, one of the striking employees, William H. Hinote, abandoned the strike and returned to work. On September 29, 1982, another of the striking employees, Emery Fontenot, abandoned the strike and returned to work.

On October 2, 1982, ten days after he returned to work, William Hinote was ambushed as he attempted to enter his vehicle and drive to work. Hinote was shot four or five times with a .22 caliber semi-automatic rifle. He suffered gun shot wounds in the abdomen, legs and hand. A State Grand Jury is presently investigating this incident.

Commencing on September 22, 1982, Mrs. Barbara Ann Hinote, the wife of William Hinote, began receiving harassing and threatening telephone calls from a union male. On October 13, 1982, an individual who works with Mrs. Hinote, signed a sworn statement that she had received threatening telephone calls at her place of employment, the Wall-Mart Store of Nederland, Texas. These threatening telephone calls were made prior to, and after, the shooting of William Hinote. This witness has subsequently identified the caller through voice exemplers. The man who made the calls was former employee, Leo Max Hildabridle, the First Vice Chairman of OCAW Local #4-23.

It should be noted that Mr. Hinote's residence is surrounded by the residences of union leaders and union members. Further,

the wife of the local chief of police was a member of OCAW Local #4-23 and was out on strike at the time of the shooting.

The local officials did not actively pursue the investigation until the facts of the case were taken directly to the United States Attorney's Office for the Eastern District of Texas. The United States Attorney's Office had a difficult time finding a violation that would support Federal jurisdiction. It was finally determined that Title 18, United States Code Sections 844 and 1951 were the only possible violations. Both Sections were only applicable because of the bomb threat and the threat of violence to the Wall-Mart Store. If the bomb threat had not been made, there would have been no Federal involvement, no thorough investigation, probably no Grand Jury, and this would be another case where others take the law into their own hands to threaten and intimidate. Although, the local judiciary is sworn to their oaths of office, one must question their objectivity and enthusiasm after reading such articles as the one appearing in the Port Arthur News. Also, one must bear in mind that these people are elected officials and since the area is strongly pro-labor, and need labor support to be re-elected.

It is my belief that it was this type of local politicial pressure that induced Congress to pass the Hobbs Act in 1946. The Hobbs Act should be applicable to all illegal activities whether or not they are related to a labor dispute. I believe that the Hobbs Act should be amended to provide for Federal jurisdiction in this type of case. Federal jurisdiction would provide for an unbiased and non-politically motivated investigations. Additionally, a greater investigatory resource of the Federal authorities, i.e., manpower, technical support, and expertise, would enhance the probability of successful investigation. Most importantly, the Federal Witness Protection Program would be available to provide a "safe haven" for witnesses who might otherwise be reluctant to aid the investigation.

I feel that acts of violence during a strike, such as the Hinote shooting, should be placed under the jurisdiction of the Federal Government to ensure that those people who would normally embrace threats, violence and intimidation as the way to force others to involuntarily give up their constitutional rights will take a long hard second look at the grave possible consequences.

Michael J. Tate

REPORTS

[From Nebraska Law Review, Vol. 59, 1980, No. 4]

By Thomas R. Haggard*

Labor Violence: The Inadequate Response of the Federal Anti-Extortion Statutes©

I. INTRODUCTION

Of all kinds of human conduct, physical violence against person or property is undoubtedly the one which receives almost universal condemnation among civilized peoples. Even the fiercest of the classical liberals and modern libertarians, who view government's function very narrowly, recognize both the propriety and the necessity of state sanctions against aggression. Indeed, this may even be viewed as the *only* truly essential function of government, the nonperformance of which divests a corporated body of any legitimate claims to be our political sovereign. The state's control of violence is, in short, a very important matter.

Labor violence, however, has long been a major problem in this country. Perhaps the earliest reported instance of labor violence occurred in 1799 in connection with a strike among the cordwainers of Philadelphia. It involved numerous acts of misconduct, including the throwing of a tack-studded potato through a shop window, barely missing the head of the proprietor who had hired a "scab"[1]—a quaint but lethal way of making a point! The fifty-year period between 1880 and 1930 was especially marked by acts of violence commited in connection with the many strikes and lockouts of that era, which often took on the dimensions of "small wars."[2] In one two-year period, 1902-04, approximately 200 people were reported killed and over 2,000 injured in acts of labor violence.[3]

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* Professor of Law, University of South Carolina School of Law; B.A., University of Texas, 1964; LL.B., University of Texas, 1967. Research for this article was financed by a grant from the Foundation for the Advancement of the Public Trust to the Wharton School, University of Pennsylvania. The views expressed herein are, however, entirely those of the author.

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1. Nelles, *The First American Labor Case*, 41 YALE L.J. 165, 176 (1931).
2. *See generally* J. BRECHER, STRIKE! (1972); S. LENS, THE LABOR WARS (1973); Taft & Ross, *American Labor Violence: Its Causes, Character, and Outcome*, in THE HISTORY OF VIOLENCE IN AMERICA 281-395 (1969).
3. NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, VIOLENCE IN AMERICA 288-89 (1969).

Although the days of company "armies" and the Molly McGuires[4] are thankfully gone, acts of violence continue to occur in labor disputes in this country. No hard data exists concerning the current scope and origin of this violence. It would appear, however, that when management opposition to unionization does go beyond the bounds permitted by law, it consists mainly of economic reprisals against union sympathizers,[5] although physical violence by management officials does occur occasionally.[6]

Violence appears to be a more extensive problem for the House of Labor. In some instances, it undoubtedly represents the "semi-official" policy of a labor union, a deliberate and all too effective tool for bargaining or organizing. In other instances, the official dereliction consists merely of a more-or-less passive indifference to the use of violence by rank-and-file members, including the failure by union leaders to take steps to prevent and correct these "unauthorized" acts. Also, there are still other instances of individual worker violence committed in open defiance of official and genuine union prohibitions against it. This conduct is of as much concern to responsible labor leaders as it is to the victims themselves.

At first glance it would appear that the law has responded fully and adequately to the problem of labor union violence. Such conduct is actionable under both the criminal[7] and the civil laws of every state,[8] and stiff penalties and high damage awards are certainly possible.[9] In addition, the federal Labor Management Rela-

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4. The Molly McGuires, the name of a group whose *formal* existence is a matter of some historical dispute, is generally used to refer to the Irish miners who engaged in widespread acts of violence, sabotage and murder in the eastern Pennsylvania coal fields during the bitter strikes of the 1870's. *See generally* S. LENS, *supra* note 2, at 11-35.
5. This kind of conduct, of course, constitutes an unfair labor practice. Labor Management Relations Act §§ 8(a)(1), (a)(3), 29 U.S.C. §§ 158(a)(1), (a)(3) (1976).
6. The section 8(a)(1) prohibition against employer interference, restraint, or coercion of employees in the exercise of their statutory rights is certainly broad enough to also encompass acts of physical violence or intimidation. *See, e.g.*, Jacques Syl Knitwear, Inc., 247 N.L.R.B. No. 191 (1980). In 1979, however, only nine violations of this kind were found by the National Labor Relations Board.
7. Such things as assault and battery, riot, burnings, and trespass against land and chattels, all of which can easily occur within the context of a labor dispute, are routinely prohibited by the criminal codes of the various states. *See, e.g.*, S.C. CODE §§ 16-3-620, -5-70 to -140, -11-120 (1976).
8. *See* Comment, *Tort Liability of Labor Unions for Picket Line Assaults*, 10 U. MICH. J.L. REF. 517 (1977).
9. *See, e.g.*, Pipeliners Local 798 v. Ellerd, 503 F.2d 1193 (10th Cir. 1974); C.E. Thurston & Sons, Inc. v. Barber, 78 L.R.R.M. 2719 (M.D.N.C. 1971).

tions Act regards such violence as an unfair labor practice.[10] Although the use of injunctions is prohibited in the context of most labor disputes, the statutes seem to recognize an exception with respect to violence.[11] Furthermore, there are numerous other statutes, both state[12] and federal,[13] which either specifically or generally include labor violence within their ambit, or which have the potential of doing so.[14]

Despite the plethora of state and federal laws which potentially touch on the matter, the problem of labor union violence seems to persist. Even with due recognition that the law can never be expected to eradicate completely man's tendency toward aggression or to always provide a full measure of justice to its victims, the uneasy feeling remains that the law does not address the problem of labor union violence with the vigor that it should. The attitude seems to be that "boys will be boys;" that a certain amount of "animal exuberance"[15] is to be expected in the emotionally supercharged atmosphere of a labor dispute; and that, while this is to be regretted, the law should not over-react.[16]

This attitude can be seen in all three branches of government.

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10. Labor Management Relations Act § 8(b)(1)(A), 29 U.S.C. § 158(b)(1)(A) (1976); Local 30, United Slate, Tile & Composition Roofers, 227 N.L.R.B. 1444 (1977); Union de Operadores y Conteros de la Industria del Cemento de Ponce, 231 N.L.R.B. 171 (1977); Teamsters Local 695, 204 N.L.R.B. 866 (1973).
11. Norris-LaGuardia Act §§ 3(e), 3(i), 29 U.S.C. §§ 104(e), (i) (1976).
12. *See, e.g.*, S.C. CODE § 41-7-70 (1976).
13. The Hobbs Act, 18 U.S.C. § 1951 (1976), which is the subject of this article, represents the primary attempt of Congress to deal with the *specific* problem of labor violence. The Labor Management Relations Act has a broader scope and direction.
14. *See, e.g.*, 18 U.S.C. § 241 (1976), prohibiting conspiracies to injure persons in the exercise of their federal rights. In United States v. DeLaurentis, 491 F.2d 208 (2d Cir. 1974), the court held, however, that this statute did not apply to violence by union officials against employees who were attempting to exercise their federal statutory right of refusing to participate in certain union activities. The court conceded that a violation *literally* existed, but went on to ask: "Can Congress have intended the consequences of such improper, but nevertheless not uncommon acts, to be up to ten years in prison, or a $10,000 fine, or both? The thought does more than give one pause; it brings one to a halt, and to a further, more careful look at the Government's position." *Id.* at 211.
15. Under the so-called "Thayer Doctrine," an employee who has been fired for engaging in conduct so designated is, despite the otherwise unprotected nature of the conduct, entitled to reinstatement if the employer has engaged in unfair labor practices which are *theoretically* assumed to have provoked such exuberance. The Board only draws the line where "the misconduct is so flagrant or egregious as to require subordination of the employee's protected rights [*sic*] in order to vindicate the broader interests of society as a whole." W.C. McQuaide, Inc., 220 N.L.R.B. 593, 594 (1975), *modified in other respects*, 522 F.2d 519 (3d Cir. 1977).
16. *See* United States v. DeLaurentis, 491 F.2d 208 (2d Cir. 1974).

Prosecution under the criminal statutes, especially at the state and local level, is reportedly lax in certain jurisdictions, perhaps because of the political sensitivity of the issue. Moreover, where vigorous attempts have been made to enforce these statutes against labor union violence, the administrative agencies and courts have often either construed the statutes so narrowly as to make them virtually worthless, or have judicially excluded labor violence from their coverage altogether. In addition, legislatures, especially Congress, have seemed either unable or unwilling to write statutes prohibiting labor violence with that degree of specificity that is apparently necessary in order to insure judicial and administrative enforcement.

In many respects, the federal anti-extortion statutes are an ideal microcosm of the problems that exist generally with respect to the law's response to labor violence. In particular, the history of these statutes and the cases construing them are an excellent example of the kind of legislative point and judicial counterpoint that has left the law in a virtual stalemate. Currently, as a part of the overall revision of the federal criminal code, the anti-extortion sections are being revised and their scope and applicability to labor union violence is again being hotly debated.[17] One cannot, however, fully appreciate the probable effect of the proposed changes except by reference to what has transpired before. The purpose of this article, thus, is to replow some ground that is concededly old in the hope that this may shed some useful light on the current controversy.

II. THE ANTI-RACKETEERING ACT OF 1934

A. The Legislative History

The original federal anti-extortion statute, known as the Anti-Racketeering Act,[18] was one of several bills that came out of the extensive investigations of "racketeering" conducted in 1933 by the Copeland Committee, a special subcommittee of the Senate Committee on Interstate Commerce.

As introduced in the Senate,[19] this bill did not specifically include or exclude the activities of labor unions. However, the Senate Report stated that "[t]he provisions of the proposed statute are limited so as not to include the usual activities of capitalistic combinations, bona fide labor unions, and ordinary business practices which are not accompanied by manifestations of racketeering."[20]

17. *See generally* § IV of text *infra*.
18. Ch. 569, 48 Stat. 979 (1934) (current version at 18 U.S.C. § 1951 (1976)).
19. S. 2248, 73d Cong., 2d Sess. (1934), 78 CONG. REC. 457 (1934).
20. S. REP. NO. 532, 73d Cong., 2d Sess. 2 (1934).

The report also stated that at that time "the nearest approach to prosecution of racketeers as such has been under the Sherman Antitrust Act."[21] However, it noted the limitations of that Act, as construed by the courts, in addressing this particular kind of abusive behavior. It is problematic, of course, whether framers of the Senate bill had in mind any of the cases in which the Supreme Court had found the Sherman Act to be inapplicable to various forms of strike violence.[22]

In any event, it is clear that S. 2248 was intended to go beyond the limitations of the Sherman Act in dealing with the problems of "racketeering" and violence in interstate commerce. It did this by separately prohibiting four things, as they would affect interstate commerce: (1) acts of violence, intimidation, or injury to person or property, or threats thereof; (2) extortion of money or other valuable consideration; (3) coercion of persons to join associations or make payments thereto; and (4) coercion of persons in the exercise of their rights to do or not to do as they choose.

This version of the bill passed the Senate with little or no debate. Moreover, it appears that the bill had been sent to the House before organized labor awoke to the possible implications insofar as labor activities were concerned. Senator Robinson, in belatedly requesting a reconsideration, stated: "Representatives of the American Federation of Labor informed me this afternoon that both bills [S. 2248 and a bill dealing with extortion by phone] might be very discriminatory against labor in this country, and that they wanted to be heard respecting them."[23]

It is not altogether clear why the AFL thought the bill was "discrimatory" or unfair to them. It seems unlikely that they believed that labor unions are simply entitled to a *blanket* exemption from the normal prohibitions against physical violence and extortion. In all probability labor feared that the historically elusive term "coercion" might be construed broadly to encompass, in addition to overt violence, the traditional labor activities of strikes and picketing, especially when such activities were directed at compelling an employer to recognize the union, to pay union wages, and to stop hiring non-union labor.[24] These objectives would certainly seem to

21. *Id.* at 1.

22. *See, e.g.*, United Leather Workers v. Herkert & Meisel Trunk Co., 265 U.S. 457 (1924); United Mine Workers v. Coronado Coal Co., 259 U.S. 344 (1922).

23. 78 CONG. REC. 5859 (1934).

24. Under certain forms of the "conspiracy doctrine," labor activities could be considered actionable or, in legal contemplation, "coercive" if either the ends or the means were impermissible. Thus, non-violent strikes to obtain a closed shop could be enjoined in some cases. *E.g.*, Plant v. Woods, 176 Mass. 492 (1900); *see* T. HAGGARD, COMPULSORY UNIONISM, THE NLRB, AND THE COURTS 21-24 (1977). Organized labor, which had vigorously and more-or-less

be encompassed by the third and fourth provisions of the bill as summarized above. Moreover, strikes to obtain these objectives had been held to be beyond the reach of the Sherman Act, and organized labor knew that the bill was intended to expand that reach in some unspecified fashion. Thus, the fears of the AFL may not have been totally unwarranted.

The House was apparently receptive to whatever fears labor had concerning S. 2248. When the bill was reported out of committee,[25] it had been rewritten so as to prohibit (1) the use of force, violence, or coercion to obtain or attempt to obtain money or other valuable consideration, "not including, however, the payment of wages by a bona-fide employer to a bona-fide employee";[26] (2) the wrongful use of force to obtain the property of another without his consent; (3) conduct in furtherance of a plan or purpose to otherwise violate the Act; and (4) conspiracies to engage in conduct otherwise prohibited by the Act. A final proviso to the Act also stated "[t]hat no court of the United States shall construe or apply any of the provisions of this act in such manner as to impair, diminish, or in any manner affect the rights of bona-fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States."[27]

The House Report, quoting a letter from the Attorney General, noted that

> The original bill was susceptible to the objection that it might include within its prohibition the legitimate and bona fide activities of employers and employees. As the purpose of the legislation is not to interfere with such legitimate activities but rather to set up severe penalties for racketeering by violence, extortion, or coercion, which affects interstate commerce, it seems advisable to definitely exclude such legitimate activities.[28]

Assured that the new bill had the complete approval of organized labor,[29] the House and the Senate passed the Act without further debate.

Despite the effort of Congress to direct the focus of the Act *toward* organized crime and *away from* organized labor, some of the first indictments under the Act were brought against labor union officials. Thus, it soon became necessary for the courts to clarify

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successfully opposed the "conspiracy doctrine" in other contexts, may have feared its resurrection in the form of this federal criminal law.

25. 78 CONG. REC. 11402-03 (1934).
26. *Id.* at 11403.
27. *Id.*
28. H.R. REP. NO. 1833, 73d Cong., 2d Sess. 2 (1934).
29. 78 CONG. REC. 11482 (1934) (remarks of Sen. Copeland).

the scope of the labor exemption. One such case ultimately wound its way to the Supreme Court.

B. The Case Law

In *United States* v. *Local 807, International Brotherhood of Teamsters*,[30] members of the union met trucks as they came into New York City and used threats and violence to obtain from the owners of these trucks the equivalent of a day's wage for driving and unloading the trucks within the city. In some instances the defendant unionists did in fact perform *some* work for which they nevertheless obtained *full* payment. In others, the owners paid the money but rejected the offers of the defendants to do the driving and unloading. There were also instances in which the defendants apparently either failed to offer to do the work or refused to do any work when asked.

The issue in *Local 807* boiled down to whether the unionists were using force to obtain "*wages* by a bona-fide employer to a bona-fide employee,"[31] thus bringing the events within the Act's exception in that regard. Although the *Local 807* case involved a now repealed portion of the Act, what the courts said in this case is important in evaluating the significance of the congressional repudiation of this interpretation, and in determining meaning of the Act as presently written.[32]

A number of competing interpretations were proffered in the opinions of both the court of appeals and the Supreme Court. However, the interpretation that was the most obvious and the most reasonable was dismissed out of hand by the court of appeals. Speaking of the exception, the court noted that "[t]heoretically it might indeed apply only to situations in which an employee procured by threats the payment of wages due under a contract which the employer had made without coercion."[33] In other words, a bona fide or uncoerced employment relationship must exist before the exception is even applicable.

Presumably, the unstated predicate of this interpretation was that actual physical violence can never really be considered a legitimate and bona fide labor union activity, insofar as the final proviso to the Act is concerned,[34] and that the specific exemption with respect to wages should, therefore, be narrowly construed. Limiting the exception to violence used by a real employee to obtain the

30. 118 F.2d 684 (2d Cir. 1941), *aff'd*, 315 U.S. 521 (1942).
31. Ch. 569, 48 Stat. 979 (1934) (current version at 18 U.S.C. § 1951 (1976)).
32. For discussion of the Congressional repudiation of *Local 807* and the current version of the Act, see § III-A of text *infra*.
33. 118 F.2d at 686.
34. *See* note 27 & accompanying text *supra*.

wages that are legitimately due him recognizes the general prohibition against violence, and at the same time, gives some meaning to the express words of the statute. Moreover, it makes sense to read the statute as recognizing a distinction between the use of force to obtain something that one is not entitled to without the consent of the other party (a wage contract), and the use of force to obtain something that one is actually entitled to (wages due under a previously consented to contract); the former but not the latter falls within the general meaning of the term "extortion,"[35] which was apparently the central concern of Congress in passing the act.

Nevertheless, the court had two objections to that interpretation. First, the court felt that there was no real distinction between using coercion to obtain a contract for wages, and using coercion to obtain the wages owed under an otherwise noncoerced contract. The court, however, was simply wrong in that regard; but the court's willingness to indulge in patently fallacious reasoning to reach that desired result is probably more important than the logical fallacy itself.[36]

More importantly, the court of appeals felt that the suggested interpretation would make the exception too narrow. The court noted that the exception was clearly intended to cover "labor disputes," that "[p]ractically always the crux of a labor dispute is who shall get the job and what the terms shall be," and that "[t]o confine the exception to cases where the original contract was voluntary would therefore leave out the great mass of instances in which the issue would ever arise."[37] This, however, simply begs the question of whether, with respect to the use of actual physical violence in contrast to the use of economic power, Congress intended the exemption to be narrow or broad.

In any event, the court of appeals obviously had to give the term "bona fide" some other meaning to avoid this particular interpreta-

35. The common definition of criminal extortion is as follows: "Extortion is a crime when . . . any person extorts that which is not due, or more than is due, or before the time when it is due." BLACK'S LAW DICTIONARY 525 (5th ed. 1979).

36. In order to demonstrate that there was no distinction between the two, the court noted that "if any employer is coerced into making a contract, the coercion ordinarily persists until the wages fall due, so that it is proper to speak of them as being 'obtained' by the original threats, or violence . . . ." 118 F.2d at 686. While that assertion may well be true, the converse cannot be inferred, namely that if the wages due are obtained through coercion, this necessarily means that the original contract was obtained in like fashion. Nevertheless, this is what would have to be inferred in order to be consistent with the court's notion that the statute recognized no distinction between these two uses of force.

37. 118 F.2d at 686.

tion. Accordingly, the majority held that the requirement of "bona fides" was not met and thus, the exception did not apply where the money was paid on a "pretext of service never in fact rendered."[38] Conversely, the exception was said to apply whenever the "employee really did the work for which he was paid."[39] However, the majority immediately expanded the exception to include payments made to a person who offered to do the work but whose offer was refused by the person being coerced to make the payments. It was on this specific point that the dissent parted company with remainder of the court.[40] The court noted that while it might be difficult to call such payments "wages," it would nevertheless be nonsensical to assume that Congress wanted to grant immunity to one who used coercion to the point of actually getting the job, but, at the same time, penalize another who did *not* persist "in pressing his unwelcome services upon the employer."[41] The court noted that this would "excuse the more heinous offense, and penalize the more venial."[42]

The majority also felt that interpreting "bona fides," to include any coercively obtained payments as long as work was performed or tendered was justified by reference to the evil that Congress intended to suppress by this Act. The court noted that what Congress had in mind was the "blackmail" that "organized gangs of bandits" had levied upon many small businessmen, especially in New York City.[43] Labor violence, *aimed at the legitimate objectives of obtaining jobs and higher wages*, was said to be an altogether different matter. The court noted:

> Congress might indeed have gone further than it did; it might have included payments extorted by threats for services rendered or offered; that too is a grave evil. But, grave as it is, it is of a different kind from that at which this act was aimed. The history of labor disputes is studded with violence which unhappily is not yet obsolete; but, although the *means* employed may be the same as those here condemned, the *end* is always different, for it is to secure work on better terms.[44]

This notion that the "legitimacy" of the *ends* somehow takes otherwise violent *means* outside the prohibitions of the statute has proved to be persistently appealing insofar as the courts are concerned. Although Congress expressly repudiated the Supreme Court decision which affirmed and restated this idea,[45] the theory was subsequently to reappear. Remarkably, it today represents

38. *Id.*
39. *Id.*
40. *Id.* at 690 (Hand, J., dissenting).
41. 118 F.2d at 687.
42. *Id.*
43. *Id.* at 688.
44. *Id.* (emphasis added).
45. *See* § III-A of text *infra*.

the prevailing interpretation of the amended statute.[46]

On appeal the Supreme Court again couched the issue in *Local 807* in terms of finding a correct construction of the wage proviso, and suggested three alternative interpretations. The Court first considered the possibility that "[t]he exception applies only to a defendant who has enjoyed the status of a bona fide employee prior to the time at which he obtains or attempts to obtain the payment of money by the owner."[47] Presumably, this interpretation had been considered and rejected by the court below. The Supreme Court rejected it, in part for the same reason—such a reading would allegedly exclude practically all labor disputes from the exemption, a result which the Court found incompatible with the probable intent of Congress. In addition, the Court found this interpretation inconsistent with the literal wording of the statute. The statute "does not except 'a *bona-fide employee* who obtains . . . wages from a bona-fide employer.' Rather, it excepts '*any person* who . . . obtains . . . the payment of wages from a bona-fide employer to a bona fide employee.' "[48] This is simply a disingenuous distortion of the suggested interpretation. The distinction underlying the interpretation focuses not on *who* uses coercion but *for whom* it is used. Coercion would be within the exception only when the person for whom it is used has an otherwise uncoerced employment relationship under which wages are owed.

The second possible interpretation considered by the Court was that the exception "does not apply if the owner's intention in making the payment is to buy 'protection' and not to buy service, even though the defendant may intend to perform the service or may actually perform it."[49] This was apparently the interpretation argued for by the government. However, the Supreme Court rejected it on the ground that the state of mind of the victim could not properly be decisive of the guilt of the defendant. The Court made it quite obvious that it viewed the exception as clearly contemplating the use of violence in labor disputes, as long as it was for a "legitimate" end.

> For example, the members of a labor union may decide that they are entitled to the jobs in their trade in a particular area. They may agree to attempt to obtain contracts to do the work at the union wage scale. They may obtain the contracts, do the work, and receive the money. Certainly Congress intended that these activities should be excepted from the prohibitions of this particular Act, even though the agreement may have contemplated the use of violence. But it is always an open question whether the employers' capitulation to the demands of the union is

46. *See* notes 152-53 & accompanying text *infra*.
47. 315 U.S. at 527-28.
48. *Id.* at 531.
49. *Id.* at 528.

> prompted by a desire to obtain services or to avoid further injury or both. To make a fine or prison sentence for the union and its members contingent upon a finding by the jury that one motive or the other dominated the employers' decision would be a distortion of the legislative purpose.[50]

Given later developments in Congress and before the courts, one cannot overemphasize the critical importance of this language. It *clearly* suggests that, in the Supreme Court's view, the first principle of the statute was that it was not intended to apply to violence aimed at attaining traditional labor goals. The victim's state of mind was rejected by the Court as a relevant consideration *only* because its use might operate in derogation of that principle. Since the instructions of the trial judge to the jury had suggested the controlling importance of the victim's intentions in paying the money, the Supreme Court necessarily found that the conviction had to be set aside, and it, therefore, affirmed the court of appeals.

Finally, the Court discussed a third possible interpretation over which the court of appeals was divided—namely, whether the trial judge erred in suggesting that payments for work not actually done could never be considered "wages," notwithstanding the defendants' willingness to do the work. In this regard, the Court noted that both the majority and the dissent below had agreed that the payment of money to one who refuses to do any work is clearly not within the exception, but that payments to one who actually does the work clearly is within the exception. The Court apparently concurred with that view and stated that "[t]he doubtful case arises where the defendants agree to tender their services in good faith to an employer and to work if he accepts their offer, but agree further . . . that he should pay an amount equivalent to the prevailing union wage even if he rejects their proffered services."[51] The Court resolved the doubt in favor of finding such payments to be "wages" for the purposes of the statute.

The Court said that in determining whether the exemption applied or not, "[t]he test must . . . be whether the particular activity was among or is akin to labor union activities with which Congress must be taken to have been familiar when this measure was enacted."[52] Referring to the so-called " 'stand-by' orchestra device, by which a union local requires that its members be substituted for visiting musicians, or, if the producer or conductor insists upon using his own musicians, that the members of the local be paid the sums which they would have earned had they performed,"[53] the Court concluded that the practice of accepting payments even

50. *Id.* at 532-33.
51. *Id.* at 534.
52. *Id.* at 535.
53. *Id.*

when the services are refused was within the contemplation of Congress and, therefore, within the exemption.

The Court's holding on this point provides even further evidence of its preoccupation with the notion that if the objective is a traditionally legitimate one from labor's perspective, then conduct aimed at obtaining it does not constitute "extortion," no matter how violent it is. This, in sum, seems to be the recurring theme of the *Local 807* decision.

Chief Justice Stone registered a strong dissent in the case. His dissent is important because many in Congress later referred to it expressly as evidencing the proper approach to the problem of labor extortion. Unfortunately, it is difficult to pinpoint exactly where in the analysis the Chief Justice parted company with his brethren. In his view the elements of an offense under the Act were: The defendants used force to compel the payment of money; these payments were made to purchase immunity from violence and for no other reason; and this end was knowingly sought by the defendants. With respect to the specific facts of the *Local 807* case, Chief Justice Stone clearly believed that illegal extortion occurs when an employer is forced to make payments for work not done, even when it is the employer himself who has elected not to use the services of an otherwise willing worker. He noted that "[u]nless the language of the statute is to be disregarded, one who has rejected the proffered service and pays money only in order to purchase immunity from violence is not a bona fide employer and is not paying the extorted money as wages."[54]

Moreover, the Chief Justice believed that the performance of some work did not necessarily bring forced payments within the exception. He cited with approval an instruction by the trial judge which stated that "[i]f . . . what the operator was paying for was not labor performed but merely for protection from interference by the defendants with the operation of the operator's trucks, the fact that a defendant may have done some work on an operator's truck is not conclusive."[55] Furthermore, he noted that "[t]he character of what the drivers or owners did and intended to do—pay money to avoid a beating—was not altered by the willingness of the payee to accept as wages for services rendered what he in fact intentionally exacted from the driver or owner as the purchase price of immunity from assault, and what he intended so to exact whether the proffered services were accepted or not."[56]

On the other hand, the Chief Justice did concede that "the procuring of jobs by violence is not within the Act . . . ." and that this

54. *Id.* at 540 (Stone, C.J., dissenting).
55. *Id.* at 542.
56. *Id.* at 540.

may include "the 'stand-by' job where no actual service is rendered . . . ."[57]

What one may synthesize from these various assertions is that, from Chief Justice Stone's perspective, the critical issue was what constituted the "essential purpose" of the transaction. If the "essential purpose" of the transaction is to exchange money in return for work done (or for someone being available to work, as in a "stand-by" situation), there is no violation of the statute even if violence is used to accomplish the transaction. On the other hand, if the "essential purpose" of the transaction is to exchange money in return for freedom from violence, a violation does exist even if work is done or offered to be performed. However, the Chief Justice did not suggest specific, objective indicia that can be used in identifying such purposes. He conceded, rather, that this is ultimately to be determined by a jury by reference to the perceived intent of the two parties. Since the instructions of the trial judge were consistent with Justice Stone's interpretation of the law, he believed that the convictions should stand.

The *Local 807* case virtually emasculated the Anti-Racketeering Act of 1934 insofar as its effectiveness as a tool against labor violence was concerned. Whether the case was consistent with the original legislative intent is hard to tell, given the obscurity and brevity of the legislative history on the issue. The intent of Congress sitting at the time the case was decided is, however, a different matter.

III. THE HOBBS ACT AMENDMENTS

A. Legislative History

Congressional reaction to the *Local 807* case was as swift as it was negative. Bills were introduced in the 77th,[58] 78th,[59] and ultimately the 79th Congress[60] to correct what Congress considered to be an outrageous decision. The legislative solution that ultimately prevailed, the so-called Hobbs Act,[61] was originally introduced in the 1943 session.[62] It passed the House that year,[63] but died in the Senate. It was reintroduced the following year and finally enacted

57. *Id.* at 541.
58. S. 2347, 77th Cong., 2d Sess. (1942); H.R. 6872, 77th Cong., 2d Sess. (1942); H.R. 7067, 77th Cong., 2d Sess. (1942).
59. H.R. 653, 78th Cong., 1st Sess., 89 CONG. REC. 3218 (1943).
60. H.R. 32, 79th Cong., 1st Sess. (1945), becoming Hobbs Act §§ 1-6, 18 U.S.C. § 1951 (1976).
61. 18 U.S.C. § 1951 (1976).
62. *See* note 59 *supra*.
63. The debates in the House on H.R. 653 were fairly extensive and are as much a legitimate source of legislative history from which probable legislative intent

into law.[64]

Fearful that *any* repetition of the exact language of the 1934 Anti-Racketeering Act would give the Supreme Court an excuse for adhering to the *Local 807* approach, Congress completely rewrote the law and took special pains to eliminate the specific language on which the decision was based. The new Act provided that:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.[65]

The terms "robbery," "extortion," and "commerce" were defined, and the final paragraph of the Act, the exact wording of which produced much debate, provided that "[t]his section shall not be construed to repeal, modify or affect" the Clayton Act, the Norris-LaGuardia Act, the Railway Labor Act, or the National Labor Relations Act.[66] Notably absent was anything akin to the wage exception of the 1934 Act. Indeed, an amendment again exempting "wages" from the coverage of the Hobbs Act was rejected on the specific grounds that this would simply open the door to another *Local 807* decision.[67]

The legislative history makes absolutely clear that Congress viewed the *Local 807* case as wrongly decided.[68] Thus, the Hobbs Act was *at least* written to require a contrary result on those identical facts, but how much beyond that Congress intended to go is a matter of speculation.

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may be deduced as are the debates on the identical bill in the following session. United States v. Enmons, 410 U.S. 396, 404 n.14 (1973).

64. After passing the House in independent form, 91 CONG. REC. 11922 (1945), the substance of the Hobbs Act was also incorporated into the Case Bill, H.R. 4908, 79th Cong., 2d Sess. (1945), which passed Congress but which was vetoed by President Truman, 92 CONG. REC. 674 (1946). Immediately after the veto, the Senate took up and passed the Hobbs Act as previously approved in independent form by the House, 92 CONG. REC. 7308 (1946), thus making it law in spite of the veto. *See generally* Comment, *Labor Law—A New Federal Antiracketeering Law*, 35 GEO. L.J. 362 (1947); Comment, *The Hobbs Act—An Amendment to the Federal Anti-Racketeering Act*, 25 N.C. L. REV. 58 (1946).

65. 18 U.S.C. § 1951 (1976).

66. *Id.*

67. 91 CONG. REC. 11913-19 (1945). Speaking of the *Local 807* case, Congressman Sumners also said: "It was the purpose of the Judiciary Committee to prevent the rendition of that sort of decision by any court in the future, so the language upon which that holding was based was eliminated." *Id.* at 11909.

68. Congressman Hancock called the *Local 807* case "a gross misinterpretation of the law and a distortion of the intent of Congress." 91 CONG. REC. 11900 (1945). *See also* 88 CONG. REC. 2071, 5334-35 (1942); 89 CONG. REC. 3193, 3201, 3202, 3206-07, 3220 (1943).

To determine what impact the Hobbs Act was intended to have upon various kinds of violent labor union activity, one can conveniently break the legislative history down into five categories: (1) Congressional interpretations of the holding and the dissent in the *Local 807* case; (2) specific examples of the kinds of conduct the new Act was intended to reach; (3) interpretations of the "no repeal" proviso and the suggested alternative; (4) the basis of labor's opposition and the congressional responses thereto; and (5) the assertions of no intended "discrimination" for or against labor.

1. Interpretations of the Local 807 *Case*

Generally speaking, Congress read the *Local 807* case very broadly. The sponsor of one of the first bills introduced on the matter said the case "in effect, placed the Congress in the position of condoning and authorizing the use of force and violence in enforcing demands so long as such force and violence are practiced by members of labor organizations and unions."[69] Similarly, it was said that the case holds "in effect that the use of force and violence was not incompatible to the lawful settlement of disputes between employers and employees."[70] In the debates on the Hobbs Act as introduced the first time, one congressman said: "I think the intent of the Congress in the 1934 statute was to protect the lawful activities of organized labor. The construction put on it by the Supreme Court would authorize unlawful acts—certainly never intended by this Congress."[71]

In these and other instances the concern of Congress seemed to focus on the fact that the *Local 807* case allowed labor unions to use physical violence to enforce their demands against employers. It was, apparently, of no particular moment that in the *Local 807* case the demands specifically involved payments for unwanted, if not unused, labor. Assuming that the Hobbs Act was intended as a negation of a broad reading of the *Local 807* case, it follows that Congress intended to prohibit the use of all violence in the enforcement of labor union demands regardless of the particular nature of the demands.

On the other hand, a somewhat narrower interpretation of the *Local 807* case is reflected in the comments of Congressman Hancock, a proponent of the Hobbs Act. "[T]he Supreme Court," he said, "held that . . . members of Teamsters Union 807 in New York City were exempt from the provisions of that law when attempting by the use of force or the threat of violence to obtain wages for a

69. 88 CONG. REC. 2071 (1942) (remarks of Sen. Holman).
70. *Id.* at 5334-35.
71. 89 CONG. REC. 3202 (1943) (remarks of Rep. Gwynne).

job *whether they rendered any services or not.*"[72] This suggests that the objectionable aspect of the *Local 807* case that was being legislatively overruled pertained not to the permitted use of violence alone, but to its use to achieve that particular result. Consequently, an intent to negate that aspect of *Local 807* would not support an inference that Congress intended to prohibit *all* forcibly backed union demands.

Perhaps the clearest indication of what Congress intended by its repudiation of *Local 807* can be found in the fact that the dissenting opinion of Chief Justice Stone was repeatedly referred to in approving terms.[73] Indeed, at one point Congressman Whittington expressly stated that "[t]he real purpose of the bill is to remove any doubt about the interpretation of the act by the Chief Justice being correct."[74] Unfortunately, as has been seen, Mr. Justice Stone's opinion is somewhat obscure as to the Act's prohibition against violence in the labor context.[75]

2. Specific Examples of Prohibited Conduct

The examples given of the kind of union conduct the new Act was designed to reach are much more helpful than are interpretations of *Local 807* in assessing the legislative intent. The facts of the *Local 807* case were, of course, cited time and time again as being prototypical of the kind of abusive labor conduct Congress wanted to reach through the Hobbs Act,[76] but other examples were also given. Congressman Anderson spoke of where the Teamsters used force in connection with a demand that drivers entering San Francisco either become members of the union or use Teamster drivers while within the city.[77] He also spoke of the situation where, in support of an organizational drive among dairy employees, a Teamsters Union refused to haul the dairy farmers' milk into the city, resulting in considerable spoilage.[78] This was considered an act of "coercion" in the colloquial sense, and one which the proposed Act was intended to reach.[79]

Congressman Baldwin of Maryland cited the example of a strike in Baltimore where sabotage and other acts of violence had been directed against the employer and his property:

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72. 91 CONG. REC. 11900 (1945) (emphasis added).
73. *See, e.g.*, 88 CONG. REC. 2071 (1942); 89 CONG. REC. 3206, 3210, 3217 (1943).
74. 89 CONG. REC. 3221 (1943).
75. *See* text accompanying notes 54-57 *supra*.
76. *See* note 68 *supra*.
77. 91 CONG. REC. 11904 (1945).
78. *Id.*
79. *Id.*

> This bill would not have been presented to the House if organized labor had recognized law and order in striking and in establishing their rights, *as they have a right to do*. Everyone can remember the taxicab strike in the city of Baltimore, . . . where cabs were overthrown, bricks thrown through the windows endangering the lives of people, innocent victims.
>
> . . . .
>
> Mr. Chairman, labor has a right to strike, but when labor perpetrates that sort of thing, they are going far beyond the bounds of reason. Certainly, I do not take the position that labor has not the right to organize or to strike, but when they do so they should abide by the . . . laws of decency. If they had done that, we would not have this legislation before the House today.[80]

Thus, it is relatively clear that these members of Congress intended the Hobbs Act to prohibit forms of labor violence other than the kind of "featherbedding" practices that were at issue in *Local 807*. It appears that the proposed Act was also intended to prohibit the use of violence and coercion to obtain otherwise legitimate objectives such as the organization of employees, membership in the union, the acquisition of work for union members, or a favorable collective bargaining agreement.

3. Debate Over the "No Repeal" Proviso

As drafted by Congressman Hobbs, the bill simply said that the four leading labor laws then in existence were not to be considered repealed, modified, or affected by the new legislation. Congressman Celler, however, proposed and strenously argued for an amendment which would have provided that "no acts, conduct, or activities which are lawful under [the four acts in question] . . . shall constitute a violation of this act."[81] Congressman Celler felt that as drafted the exception to the bill would *not* protect labor in the exercise of rights guaranteed by the other statutes; the "no repeal" language, he conceded, would continue to protect the exercise of those rights from prosecution *under the former statutes*, but not necessarily from prosecution *under the proposed Hobbs Act*.[82]

Congressman Celler's interpretation of the language was not a reasonable one. Language of this kind would normally be construed to mean that if any of the four labor statutes grant labor unions an affirmative right to engage in a particular kind of conduct, the Hobbs Act should not be construed as taking that right away. However, it was repeatedly pointed out that none of the four acts gave unions the affirmative right to engage in any acts of force and violence prohibited by the Hobbs Act.[83]

On the other hand, Congressman Celler's version of the excep-

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80. *Id.* at 11918 (1945) (emphasis added).
81. 89 CONG. REC. 3220 (1943).
82. *Id.*
83. *Id.* at 3193, 3202.

tion would have seriously limited the scope of the Act insofar as labor union activities were concerned. It is reasonably apparent from his explanations of the proposed amendment that he construed the term "lawful" to mean "not illegal."[84] Saying that certain conduct is "not illegal" under a specific statute, as per Celler's version, is vastly different from saying that the statute makes such conduct a matter of "right." The Clayton Act,[85] for example, did not give labor unions an affirmative "right" to use force in the settlement of strikes; but the use of such force had also been held to be "not illegal" under that statute.[86] Arguably, under the Celler amendment it would not be subject to prosecution under the Hobbs Act either.[87] Thus, some labor leaders privately conceded that the Celler amendment would have nullified the Hobbs Act altogether, at least insofar as labor activities were concerned.[88] If an act was not already illegal under one of the four statutes, the Hobbs Act simply would not cover it.

Congressman Hobbs opposed the Celler amendment on slightly different grounds. He feared that if certain things which are generally "lawful" under the labor statutes were declared to be beyond the purview of the Hobbs Act, it would be construed as also excluding the pursuit of these "lawful" ends by "unlawful" means.[89] He said,

> Mr. Chairman, almost any crime may be committed while the perpetrator is engaged in otherwise lawful acts, conduct or activities.
>
> . . . Because a man is engaged in the perfectly lawful conduct of striking, is he guiltless if he commits rape?
>
> Picketing is lawful. But does that mean that a picket cannot be punished for stealing?
>
> The right of collective bargaining is guaranteed by law. Does that give collective bargainers the right to murder?
>
> . . . .
>
> Honestly and peaceably seeking employment is not only lawful, but commendable. However, it is equally lawful for one from whom employment is sought to refuse it. Does any sane and reasonable man contend that the right honestly and peacefully to seek employment gives the seeker the right to force employment or to beat the refuser?
>
> . . . .
>
> I submit that for these reasons the Celler amendment is dangerous, especially in view of the decision in the Local 807 case, which held that no matter how much violence might accompany a request for employment it

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84. *See id.* at 3220.
85. 15 U.S.C. §§ 12-27 (1974).
86. *See, e.g.*, Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940) (Court held that labor union activity that was illegal under local law could be legal under the Sherman Antitrust Act).
87. *See* 89 CONG. REC. 3202 (1943) (remarks of Congressman Gwynne).
88. *Id.* at 3203, 3224 (remarks of Rep. Baldwin).
89. *Id.* at 3194-95, 3220-21 (remarks of Rep. Hobbs).

> was all right and you are perfectly innocent under the antiracketeering law. The same thing is true here. No matter what may be said about the Celler amendment, it still does not require, as do the acts to which it points, that lawful acts, conduct or activities must be done in a lawful and peaceful way. Without that or something like that the amendment should be defeated.[90]

The relevance and importance of this language used by the author of the Hobbs Act cannot be emphasized too strongly. In slightly different terms, what Congressman Hobbs was saying was that the fact that the objective or *end* is legitimate under one of the general labor statutes does not mean that such objective can be pursued by violent *means*. Rightly or wrongly, Congressman Hobbs feared that the Celler amendment would have that effect insofar as prosecutions under the proposed anti-extortion statute were concerned. Necessarily, Congressman Hobbs also believed that the statute as he drafted it did *not* have that effect. The Celler amendment was defeated.[91]

4. Objections to the Hobbs Act and the Responses

It is significant to note that, on a substantive level, the opposition to the Act was *not* grounded on the fact that it was to be a violation of federal criminal law for labor unions to use actual physical violence in furtherance of their organizational or collective bargaining objectives. The substantive objection, rather, was that the Act might be construed in such a way as to *also* preclude unions from pursuing these legitimate goals by the traditional methods of peaceful strikes and picketing. Congressman Celler, for example, noted:

> There are courts which have held that whenever workers seek to bring about a wage increase or other adjustment of their working conditions by a strike, however peacefully conducted, they are attempting to "force" their employer to grant the wage increase or grant the requested adjustment of their working conditions.[92]

He also feared that even a mere demand for a wage increase might be construed as an implied promise to strike if it were not granted, thus making it an illegal "threat."[93] Congressman Celler, concerned that the Hobbs Act might be similarly construed, also noted that "there are courts which have held that picketing, *however peacefully conducted*, is by its very nature an attempt to force the employer into action which he is not willing to take."[94]

Similarly, Congressman LaFollette said of the terms of the Act

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90. *Id.* at 3220-21.
91. *Id.* at 3225.
92. 91 CONG. REC. 11901 (1945).
93. *Id.*
94. *Id.* (emphasis added).

that: "I think they are broad enough to cover a discussion between employees as to whether or not they shall join a union. Those things are often accompanied by heated discussions which might be called coercion and they would affect the right of labor to organize."[95]

The proponents of the bill, however, consistently denied these charges. It is important to note that the basis of their denial was *not* that the ends being sought in these examples were legitimate ones, thus putting the means being used to achieve them beyond the purview of the Act. Instead, they answered that *otherwise peaceful* strikes and picketing are not acts of force or violence; such acts are specifically protected by federal statute and could not, thus, be considered a violation of the Hobbs Act. This point was made repeatedly. Congressman Hancock, in responding specifically to the claims of Congressman Celler, said: "A moment ago the gentleman said the threat of a strike came within the definition of extortion. This bill merely prohibits the wrongful use of force or threats. That cannot apply to a threatened strike because strikes are lawful, they are not wrongful."[96] Similarly, in giving a negative response to the question of whether a threat to go on strike would constitute a violation under the proposed bill, Congressman Sumners said, "as I . . . understand this bill, there is not a thing in it to interfere in the slightest degree with any legitimate activity on the part of labor people or labor unions, unless somebody thinks it is legitimate for them to rob and extort."[97]

That robbery and extortion were intended to connote acts of physical violence is also evident in Congressman Gwynne's listing of what the government would have to prove in order to obtain a conviction under the statute—namely, that the conduct affects interstate commerce, that there be an actual taking of property, *and* that this be done "by violence, by personal violence, or by actual threats of personal violence."[98] Likewise, Congressman Fellows noted that "the so-called Hobbs bill is designed to make assault and battery and highway robbery unpopular. Its purpose is to protect trade and commerce [which would certainly include the negotiation of collective labor agreements and most other labor-related activities] against interference by violence, threats, coercion, or intimidation."[99]

Congressman Savage was concerned about the Act's effect on a

95. *Id.* at 11920.
96. *Id.* at 11902.
97. *Id.* at 11908.
98. *Id.* at 11903.
99. *Id.* at 11907.

"strike for better working conditions."[100] A response by Congressman Barden distinguished a *peaceful* strike from the type of activity the Act was designed to prohibit. Focusing on the means used to accomplish the ends sought, he said:

> Do not talk to me about the man on strike. If he were an honest gentleman, he would not commit such offenses as robbery or extortion while on strike or off strike.
>
> . . . The fact that a man is on strike certainly does not license him to be an outlaw. . . .
>
> Good honest men do not commit robbery. They do not commit burglary. They do not beat up innocent people. They do not extort money. Good honest men do not do those things.[101]

A few moments later Congressman Michener said that "this bill will not interfere with legitimate strikes"[102]—presumably referring to strikes which are both peaceful and directed toward an otherwise legal end.

Congressman LaFollette also shared the fears of labor that the proposed Hobbs Act might be construed too broadly. Nevertheless, he did agree that the use of force or violence, *even if it was to obtain wages*, should be clearly prohibited. Thus, he proposed an amendment to that effect and said:

> If we put a construction into this statute which states that a bona fide payment of wages from an employer to an employee *shall not include wages* or the transfer of a thing of value *which is obtained by violence* or the threat of use of violence, then we reach the situation we are attempting to reach . . . .[103]

The amendment was rejected presumably because the *Local 807* case caused the majority to avoid the "bona fide wages" language altogether and, instead, couch the prohibitions of the statute in even broader language. It would, however, be incongruous indeed to *now* construe the Act as not reaching as far as even its opponents were willing to go.[104]

On the other hand, the most commonly cited indication that the Act was *not* designed to reach *mere* strike violence is contained in the following exchange:

> Mr. MARCANTONIO. All right. In connection with a strike, if an incident occurs which involves—
>
> Mr. HOBBS. The gentleman needs go no further. This bill does not cover strikes or any question relating to strikes.

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100. *Id.* at 11841 (remarks of Rep. Savage).
101. *Id.* (remarks of Rep. Barden).
102. *Id.* at 11843 (remarks of Rep. Michener).
103. *Id.* at 11846 (remarks of Rep. LaFollette) (emphasis added).
104. Nevertheless, such a result was, in effect, reached by the Supreme Court in United States v. Enmons, 410 U.S. 396 (1973), where the Court held that the use of violence to obtain a more favorable collective bargaining agreement (covering, among other things, the payment of wages) was not within the prohibitions of the Hobbs Act. *See* text accompanying notes 166-200 *infra*.

> Mr. MARCANTONIO. Will the gentleman put a provision in the bill stating so?
>
> Mr. HOBBS. We do not have to, because a strike is perfectly lawful and has been so described by the Supreme Court and by the statutes we have passed. This bill takes off from the springboard that the act must be unlawful to come within the purview of this bill.
>
> Mr. MARCANTONIO. That does not answer my point. My point is that an incident such as a simple assault which takes place in a strike could happen. Am I correct?
>
> Mr. HOBBS. Certainly.
>
> Mr. MARCANTONIO. That then could become an extortion under the gentleman's bill, and that striker as well as his union officials could be charged with violation of sections in this bill.
>
> Mr. HOBBS. I disagree with that and deny it in toto.[105]

Congressman Gwynne also indicated that the Act was not intended to cover "a clash between strikers and scabs during a strike."[106] Presumably, Congressman Hobbs also had this kind of picket line violence in mind. If so, the import of what Congressman Hobbs was saying becomes clear. Based on what he said elsewhere in the record,[107] it is inconceivable that he intended to exempt violence simply because it occurred in conjunction with an otherwise legal strike. Although some of the opponents of the bill felt that "minor altercations on the picket line"[108] should not be treated as felonies, there is no basis for assuming that Congressman Hobbs or any other supporter of the bill intended any distinction between "major" and "minor" acts of violence.[109] Rather, Congressman Hobbs's statement must be viewed in the context of the specific crimes the bill purported to prohibit—extortion and robbery. The purpose of most picket line violence is to prevent persons against whom it is directed from entering the employer's premises, not to obtain money from them. It is difficult to see how such violence could be conceptualized as either extortion or robbery. In short, Congressman Hobbs was simply recognizing that the Act did not reach *all* violence, but only that which would fit within the legal definition of extortion or robbery.

5. The Intent Not to Discriminate For or Against Labor

The fifth category of legislative remarks shedding light on the intended scope of the Hobbs Act are those which indicated that the Act should not discriminate on the basis of whether the violent actor was or was not associated with a labor union. Many congressmen objected to the *Local 807* case because it seemed to

105. 89 CONG. REC. 3213 (1943).
106. *Id.* at 3202 (remarks of Rep. Gwynne).
107. *See* notes 89-90 & accompanying text *supra*.
108. 91 CONG. REC. 11901 (1945) (remarks of Rep. Celler).
109. United States v. Enmons, 410 U.S. 396, 410 n.20 (1973).

grant a special license to labor unions alone to use violence in the pursuit of their goals. For example, Congressman Hobbs said that the case "decided that no matter how much violence a *union* man might use *in seeking employment*, he could not be punished under the 1934 Anti-Racketeering Act."[110] He added,

> I am saying that is the effect of the construction put upon robbery committed while engaged in *otherwise lawful* conduct by the Supreme Court decision. No matter how much force is used, robbery is a perfectly innocent pastime, as Chief Justice Stone said, *if the perpetrator be a labor-union member seeking employment.*[111]

Similarly, it was also said that the *Local 807* case "in effect, placed the Congress in the position of condoning and authorizing the use of force and violence *in enforcing demands* so long as such force and violence are practiced by *members of labor organizations and unions.*"[112] Such favored treatment was clearly not acceptable to Congress; it was the nature of the act and not the status of the actor that Congress thought was of controlling importance, and the Hobbs Act was designed to implement that policy. On this point, the following exchange is revealing:

> Mr. SUMNERS of Texas. There is nothing in this bill dealing with persons connected with organized labor as such. It is just an attempt on the part of the Committee on the Judiciary to bring in a bill that will prevent this type of robbery in interstate commerce.
>
> Mr. MICHENER. That is all there is to it. The only way labor is involved is that if these offenders belong to the union, and by robbery or exploitation collect a day's wage—a union wage—they are not exempted from the law solely because they are engaging in a *legitimate union activity.*[113]

In other words, "[a]ll are treated alike and no group is given special permission to violate the law."[114] Moreover, as these remarks demonstrate, the legitimacy of a group's goal or objective is irrelevant.

A fairly clear pattern emerges from this legislative history. Congress did not intend to interfere with otherwise peaceful strikes and picketing. Yet, Congress did intend to prohibit the use of force, violence, and threats as a means of obtaining wages or other things of value from an employer despite the fact that obtaining such benefits might be otherwise completely legitimate. In other words, as brokers of employee services, labor unions were to be limited in the use of force to the same extent as were other brokers or sellers of commodities; in either instance, the effectuation

110. 89 CONG. REC. 3195 (1943) (emphasis added).
111. *Id.* (emphasis added).
112. 88 CONG. REC. 2071 (1942) (remarks of Sen. Holman) (emphasis added).
113. 91 CONG. REC. 11843-44 (1945) (emphasis added).
114. *Id.* at 11844 (remarks of Rep. Michener).

of the exchange through the use of force was to be prohibited as extortion.

B. The Case Law

Although even a cursory review of the legislative history clearly indicates that Congress intended the Hobbs Act to prohibit labor from using force or violence as a means of obtaining concessions from employers, the initial judicial reaction was still somewhat hesitant. For example, in *United States v. Kemble*[115] the Third Circuit Court of Appeals was faced with facts not unlike those in *Local 807*. A union official had used actual and threatened violence to cause an employer to hire a union member to unload a truck whenever it made deliveries to an RCA plant. These services were not otherwise desired by this employer. The court had little difficulty in finding that, on these particular facts, a violation existed. The court, however, did hedge somewhat when it stated that:

> The conclusion seems inescapable that Congress intended that the language used in the 1946 statute be broad enough to include, in proper cases, the forced payment of wages. We say "in proper cases" advisedly. For it is not necessary that we here consider the great variety of circumstances in which coercion may be involved in the payment of wages. We need not consider the normal demand for wages as compensation for services desired by or valuable to the employer. It is enough for this case, and all we decide, *that payment of money for imposed, unwanted and superfluous services* such as the evidence shows Kemble attempted to enforce here by violent obstruction of commerce *is within the language and intendment of the statute.*[116]

Although the majority decision was cautious in construing the scope of the new Act, it still went too far in the opinion of dissenting Judge McLaughlin. Notwithstanding the legislative history, he felt that the disagreement Congress had with the *Local 807* decision was a relatively narrow one. He maintained that the Supreme Court there had held that: (1) the use of force to become a genuine employee (one who actually works and is paid for it) was within the "wage" exception, and (2) the use of force to compel the payment of wages when the services of the would-be employee are refused was also within this exception. According to Judge McLaughlin, Congress' quarrel with the decision and its repudiation thereof pertained only to the second point, and that the defendant's conduct in this case fell within the still exempt first point. As such, it merely represented "a reputable union's genuine attempt to organize a trucking corporation,"[117] which was not the kind of conduct that the Hobbs Act was intended to prohibit. Gen-

115. 198 F.2d 889 (3d Cir.), *cert. denied*, 344 U.S. 893 (1952).
116. 198 F.2d at 891-92 (emphasis added).
117. *Id.* at 895 (McLaughlin, J., dissenting).

erally, he felt that the use of violence by a labor union in pursuit of a legitimate goal, such as obtaining work for its members, is not a violation of the Hobbs Act; instead, it is a matter for state and local prohibition.

Judge McLaughlin's theory was rejected not only by the Third Circuit in *Kemble* but also, later, by the Supreme Court;[118] but not without first picking up some support elsewhere. In *United States v. Green*,[119] Federal District Judge Adair reversed a conviction on the grounds that the facts as alleged in the indictment did not state an offense under the Hobbs Act. The indictment, tracking fairly closely the language used in the *Kemble* case, charged that the defendant had used "actual and threatened force, violence and fear" to cause "wages to be paid for imposed, unwanted, superfluous, and fictitious services of laborers."[120] In concluding that this did not state an offense under the Act, Judge Adair relied on the proviso to the Hobbs Act which states that it was not designed to "repeal, modify or affect the provisions of . . . the Wagner Act."[121]

Given the legislative history of this section,[122] of which Judge Adair purported to have made "a personal investigation as to the intent of Congress,"[123] it is startling indeed to see how the section was used to support the result he reached. Noting that in several cases the Supreme Court had held that "a demand by a Union representative for 'feather-bedding' is not an unfair labor practice"[124] under the Wagner Act, Judge Adair stated, "[i]t seems incongruous that Congress intended that a lawful act"[125] under one statute would be punishable as a felony under another.

This reasoning is remarkable in two respects. First, it proceeds as if the Cellar version of the proviso had been adopted rather than the committee or Hobbs version. As previously discussed, Congressman Celler wanted the language to read, "no acts . . . which are lawful" under the labor statutes shall be considered unlawful under the Hobbs Act, with "lawful" apparently being equivalent to "not illegal."[126] Although Congress expressly rejected that ap-

118. *See* notes 130-38 & accompanying text *infra*.
119. 135 F. Supp. 162 (S.D. Ill. 1955), *rev'd*, 350 U.S. 415 (1956).
120. 135 F. Supp. at 162.
121. 18 U.S.C. § 1951 (1976).
122. *See* § III-A-3 of text *supra*.
123. 135 F. Supp. at 162-63.
124. *Id.* at 163. Judge Adair was undoubtedly correct in concluding that the union's objective in this case was "not illegitimate." This conclusion, as well as its significance insofar as the current law is concerned, will be discussed subsequently. *See* note 151 & accompanying text *infra*.
125. 135 F. Supp. at 163.
126. *See* note 84 & accompanying text *supra*.

proach, that is exactly the interpretation Judge Adair gave the statute.

In addition, Judge Adair simply ignored the warning of Congressman Hobbs that the "lawfulness" of the ultimate objective could not serve as a justification for the use of force to achieve it.[127] Congress, however, did apparently heed this admonition in that it rejected the Celler version which Hobbs said was susceptible to such a construction.

Nevertheless, Judge Adair concluded that—since obtaining wages, albeit for unwanted services, was within the defendant's "rights and responsibilities as a Union representative"[128]—no violation of the Hobbs Act existed even though violence was used to achieve that end. Instead, a violation is made out only when the end itself is "unlawful," as where the union representative is obtaining money for his own benefit.[129] Thus, on the question of the "legitimacy" of the end serving as an exoneration of violent means, Judge Adair was in line with the dissent in *Kemble*.

The Supreme Court, however, disagreed strongly. With respect to the notion that the Act applied *only* to a union official's attempt to obtain money for his own benefit, the Court simply noted that while the union officials in the *Local 807* case were not attempting to get the money for that purpose, the Congress clearly intended for the Hobbs Act to proscribe what they were doing.[130] Furthermore, the Court noted that "[t]he legislative history makes clear that the new Act was meant to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship"[131]—including, one would presume, the primary incidents of that relationship, namely the obtaining of work and the payment of otherwise legitimate wages.

With respect to Judge Adair's reliance on the proviso to the Hobbs Act which stated that it did not affect any of the several labor statutes the Court simply noted that: "There is nothing in any of those Acts, however, that indicates any protection for un-

127. *See* notes 89-90 & accompanying text *supra*.
128. 135 F. Supp. at 163.
129. *Id.* Most of the cases under the Hobbs Act have involved attempts by labor union officials to extort money for their own personal use. *See, e.g.*, United States v. Daley, 564 F.2d 645 (2d Cir. 1977), *cert. denied*, 435 U.S. 933 (1978); Anderson v. United States, 262 F.2d 764 (8th Cir. 1959); United States v. Varlack, 225 F.2d 685 (2d Cir. 1955); United States v. Compagna, 146 F.2d 524 (2d Cir. 1944), *cert. denied*, 324 U.S. 867 (1945). In some instances the money was not obtained through the threatened use of physical violence, but through the threatened use of "economic force," *i.e.*, otherwise nonactionable strikes, picketing, and the like. How these cases fit into the conceptual scheme will be discussed at § III-C of text *infra*.
130. United States v. Green, 350 U.S. 415, 419-20 (1956).
131. *Id.* at 419 (footnote omitted).

ions or their officials in attempts to get personal property through threats of force or violence. Those are not legitimate means for improving labor conditions."[132] The Court footnoted five cases that presumably illustrated labor conditions or objectives which the labor statutes did not affirmatively permit a union to seek through "threats of force of violence," and which, therefore, fell within the parameters of the Hobbs Act when those means are used. Significantly, in four of these cases, as in *Green* itself,[133] what the unions were trying to attain was not intrinsically "unlawful" or "illegitimate": In *United Construction Workers v. Laburnum Construction Co.*[134] the object was to get employees to join the union and to get the employer to recognize it as the employees' representative; *Allen Bradley Local 1111 v. Wisconsin Employment Relations Board*[135] involved employer accession to the union's contract demand and employee observance of the picket line; *NLRB v. Fansteel Metallurgical Corp.*[136] dealt with employer recognition of and negotiation with the union over wages, hours and working conditions; and in *Kemble*[137] the object was to get the employer to hire certain union helpers. Only *United States v. Ryan*[138] involved an objective that was itself illegal—namely, the payment of money by an employer to the representative of his employees. Thus, it would seem that in *Green*, the Supreme Court was concerned with the use of force and violence to obtain payments, not with the "legitimacy" or "illegitimacy" of the payments themselves.

This, certainly, is how the lower courts viewed the matter on remand.[139] Following the Supreme Court decision, the defendants asked that the verdict be set aside on the grounds that it was not supported by sufficient evidence and that the trial judge erred in refusing to submit a particular instruction to the jury. The instruction in question would have been to the effect that if the jury finds that the defendant has a "labor dispute" of a jurisdictional nature with another union at the time of the alleged threats to compel the payment of wages to its members for unwanted services, the matter was beyond the scope of the Hobbs Act.[140]

The Court of Appeals for the Seventh Circuit rejected that argument, noting the Supreme Court's admonition that the four labor

132. *Id.* at 420 (footnote omitted).
133. *See* note 124 & accompanying text *supra*.
134. 347 U.S. 656 (1954).
135. 315 U.S. 740 (1942).
136. 306 U.S. 240 (1939).
137. 198 F.2d 889 (3d Cir.), *cert. denied*, 344 U.S. 893 (1952).
138. 350 U.S. 299 (1956).
139. *See* United States v. Green, 143 F. Supp. 442 (S.D. Ill. 1956), *aff'd*, 246 F.2d 155 (7th Cir.), *cert. denied*, 355 U.S. 871 (1957).
140. 246 F.2d at 160.

statutes referred to in the proviso (which do generally regulate "labor disputes") in no way sanction the use of force or violence. The court added:

> We agree with the decisions that this statute encompasses illegal conduct which may be an outgrowth of a labor dispute just as any other criminal conduct may result from activity originally lawful. The mere fact that conduct originates in exercise of a lawful function does not prevent the ramifications and extensions thereof from becoming unlawful.[141]

This *exactly* reflects the position that Congressman Hobbs took with respect to the Act. In sum, the *Green* decision on remand correctly stands for the proposition that the use of violence or threats of violence by labor union officials to enforce their demands, regardless of legitimacy, constitutes extortion under the Hobbs Act.

Despite the Supreme Court's willingness to construe the Hobbs Act broadly and as intended, judicial hostility to the Hobbs Act continued to surface. It was conceded that the express congressional reversal of the *Local 807* case necessarily meant that Congress intended to include a demand for wages for work not done within the prohibition of the Act. In addition, the *Green* case necessarily meant that, at the very least, a demand for wages for *unwanted* work was covered. As one court framed it, the final issue was whether the Act covered "violence to property as a part of a plan to extort a thing of value in the form of a collective bargaining agreement covering wages, hours and working conditions of *wanted* employees."[142] The issue was ultimately answered in the negative. But the path to that result was strewn with unfortunate distortions of the legislative history and embarrassing contortions of ordinary logic and semantics.

The first major case to reach the result was *United States v. Caldes*.[143] Since the United States Supreme Court was to later speak approvingly of this decision,[144] a detailed analysis is in order. First, the court took a narrow view of the disagreement between Congress and the Supreme Court's result in the *Local 807* case. It said that Congress thought *Local 807* was wrong in recognizing the union member's willingness to work as an excuse for violence, since this could be construed as also permitting the use of force to "bring about the hiring of unwanted, unneeded employees."[145] This particular result was predicated solely on the Supreme Court's interpretation of section 2(a) (the "wage exception"), and the fact that "[t]he legislative history of the Hobbs Act

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141. *Id.*
142. United States v. Caldes, 457 F.2d 74, 75 (9th Cir. 1972).
143. 457 F.2d 74 (9th Cir. 1972). *See generally* Willis, *Labor Violence—The Judiciary's Refusal to Apply the Hobbs Act*, 28 S.C. L. REV. 143 (1976).
144. *See* United States v. Enmons, 410 U.S. 396, 409 (1973).
145. 457 F.2d at 77.

shows that the deliberate purpose of Congress was to eliminate Section 2(a)."[146] Thus, the court in *Calders* reasoned that the purpose of the Hobbs Act was *merely* to compel a contrary result in cases like *Local 807*, where the work is either unperformed or unwanted. The court concluded that:

> By eliminating Section 2(a) however, Congress did not intend to eliminate traditional labor or union activity, albeit militant, which has as its object legitimate ends. The exclusion was not meant to provide impunity to the terroristic and extortionate activities of union members, but to protect union activity directed toward legitimate labor goals even when militantly pursued.[147]

The court then noted that the *Green* case fell within this pattern, since the purpose of violence there was to obtain wages for "imposed, unwanted and superflous or fictitious services."[148] The court also distinguished other lower court cases which had found that "extortion occurred when a union member tried to *foist* himself or another union member on an employer by threats of force and violence."[149]

What the court seemed to ignore was that Congress did not merely repeal the "wage exception" which was the technical basis of the *Local 807* case. Instead, Congress, entirely rewrote the Act for the express purpose of precluding decisions *like* that in *Local 807*.[150] This suggests a broad rather than a narrow congressional overruling of the decision. Given the repeated emphasis in the debates on the element of violence, it is more likely that it was this aspect of the *Local 807* facts that Congress found offensive—not just the objective to which the violence was directed.

Moreover, euphemisms and pejoratives are no excuse for sound analysis. Pouring paint on the employer's trucks and the clean laundry he was delivering, as in *Caldes*, is no more acceptable when it is called "militant," (in the court's language) than it is when it is called "the use of violence against property." At a more substantive level, the fact that something can be disapprovingly called "foisting" one's "unwanted and superfluous or fictitious services" on an employer does not necessarily preclude that conduct from also being called a "legitimate labor goal." Thus, the distinction articulated by the court is totally without substance.

A classic example of this is the *Green* case. The union there simply wanted the employer to hire union members to scout ahead of bulldozers and warn the drivers of approaching pitfalls; the employer felt that this was an unnecessary precaution. But whatever

146. *Id.* at 76.
147. *Id.*
148. *Id.* at 77.
149. *Id.* (emphasis added).
150. *See* notes 69-71 & accompanying text *supra*.

the dis-economies of the situation, this kind of job acquisition and work sharing among union members is a traditional, legitimate, and otherwise entirely legal objective and purpose of American labor unions.[151] Stated differently, it was as legitimate for the union in *Green* to want to induce the employer to hire an additional man to walk in front of the bulldozer as it was for the union in *Caldes* to want to induce the employer to enter into a collective bargaining agreement. In short, the court really did not succeed in distinguishing the violence in the case before it from the violence in *Green*—not, at least, by reference to the alleged "legitimacy" of the goal.

The court, however, attempted to justify its distinction on another basis. It noted that the language of the Hobbs Act was derived from the New York extortion statute, and under that statute strikes and picketing had been found not to constitute "extortion" *if* the purpose was to accomplish some legitimate labor objective, such as organization; but such conduct was actionable when merely "used as a pressure device to exact the payment of money as a condition of its cessation."[152] The Hobbs Act had been similarly construed, the court noted, in a case where a labor leader had threatened to call a strike unless the employer paid him some "under the table" money.[153] From this the court apparently concluded that the illegitimacy of the objective is *always* a necessary element in a Hobbs Act violation. This reasoning, however, is fallacious.

The distinction adopted by the New York cases with respect to strikes can be understood only in a historical perspective.[154] At one time in the history of American labor law, under the so-called

151. Although the Labor Management Relations Act § 8(b)(6), 29 U.S.C. § 158(b)(6) (1976) contains a so-called "anti-featherbedding" provision, it would not prohibit the kind of conduct that was involved in *Green*. In American Newspaper Publishers Assoc. v. NLRB, 345 U.S. 100 (1953), the Court noted that the LMRA "limits its condemnation to instances where a labor organization or its agents exact pay from an employer in return for services not performed or not to be performed." *Id.* at 110. This conclusion is bolstered by Senator Taft's observation that although the Senate did not approve of featherbedding in the broader sense, it "felt that it was impractical to give a board or a court the power to say that so many men are all right, and so many men are too many." 93 CONG. REC. 6441 (1947). Moreover, a demand for the kind of work that was involved in *Green* would not only be a legitimate subject of bargaining, but also a mandatory one. As the Court in *American Newspaper Publishers* put it, the Act "leaves to collective bargaining the determination of what, if any, work, including bona fide 'made work,' shall be included as compensable services." 345 U.S. at 111.

152. 457 F.2d at 78.

153. United States v. Kramer, 355 F.2d 891 (7th Cir. 1966).

154. *See generally* T. HAGGARD, COMPULSORY UNIONISM, THE NLRB, AND THE COURTS 11-24 (1977), which contains, from a slightly different perspective, a

"conspiracy doctrine," strikes and picketing were sometimes said to be inherently coercive, because of the economic injury-in-fact that they caused the person to whom they were directed. However, even before the matter was almost totally preempted by federal statutory law, some of the common law courts had moved considerably away from that position and had adopted a "means/ends" approach. This approach declared the concerted activities of labor to be actionable or coercive only if they involved either "unlawful means"—conduct which was itself criminal, tortious, or perhaps even in breach of contract—*or* "unlawful ends"—a term capable of being construed as including almost anything a judge might find to be offensive.

Although this approach is certainly no longer the primary device for measuring the legality of strikes (that function having been assumed by the various federal labor statutes), ghosts of the theory do sometimes emerge in analgous contexts where the issue is whether an *otherwise peaceful* strike or picketing falls within the purview of some general statute prohibiting "acts of force" or "coercion." In such a case, if a violation exists at all it must necessarily be because the objective itself is unlawful or illegitimate.

The New York case, relied on by the *Caldes* court,[155] held that the otherwise peaceful picketing (the "means") became a coercive exercise of force only when the objective shifted from attempting to organize the employer (a legitimate "ends") to obtaining money from him as a condition of stopping the strike (an illegitimate "ends"). However, if this holding was merely a reflection of the historically pervasive "means/ends" theory of coercion, it becomes readily apparent that one cannot deduce from it what the *Caldes* court deduced—namely, that *no* strike can be considered coercive unless the ends are illegitimate. To the contrary, under the "means/ends" approach a *violent* strike is coercive regardless of its objective; and there is nothing in the New York case to suggest otherwise. Thus, the *Caldes* court's reliance on that authority was misplaced.

Finally, at the policy level, the *Caldes* court simply noted that labor unions should be allowed great latitude in pursuing the interests of their members and that "[t]he expansive interpretation of 'extortion' used in the Hobbs Act as urged by the Government would make criminal the activities of many militant labor organizations."[156] The court contended, for example, that a strike in violation of a contractual no-strike clause would be a " 'wrongful' use

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comprehensive overview of the evolution of the "criminal conspiracy" doctrine.

155. People v. Dioguardi, 8 N.Y.2d 260, 168 N.E.2d 683, 203 N.Y.S.2d 870 (1960).

156. 457 F.2d at 78.

of force"[157] and thus, constitute criminal conduct under the Government's view. This is a somewhat puzzling assertion, since it would seem that a strike in violation of a "no-strike" clause would also be a violation under the court's approach. The objective of such conduct certainly could not be denominated a "legitimate labor goal"; thus, by analogy to the New York cases, a strike to obtain that objective could be considered "coercive" and, therefore, a violation of the Hobbs Act.

As a second example of the possible overbreadth of the Government's approach, the court noted that "[s]pontaneous and sporadic fighting on the picket lines could also be condemned as the use of wrongful force and as extortion if [the Government's] view was allowed to prevail."[158] The court then indicated that in the year following passage of the Hobbs Act Congress passed the Taft-Hartley Act, containing "specific provisions which condemned this action as unfair labor practices."[159] Furthermore, the court noted that during the debates on the Taft-Hartley Act, "no congressman expressed an opinion that the Hobbs Act of the preceding year covered union violence while a strike was in progress."[160]

The court's reasoning here is both obscure and factually incorrect. In the first place, the section of the Taft-Hartley Act to which the court specifically referred primarily prohibits secondary boycotts or union attempts to require a neutral employer to stop doing business with the employer with whom the union has a dispute.[161] Although violence can occur in connection with such boycotts, it is certainly not a necessary element of the offense. Moreover, even if violence did occur in a specific situation, the objective of a secondary boycott is to force the victim to stop doing business with someone else, not to force him to pay the union money or anything else of value, *as is required in order for the crime of extortion to exist*. In short, what the Taft-Hartley Act prohibited and what the Government in the *Caldes* case claimed that the Hobbs Act prohibited were two entirely different things. Thus, even if there had been no mention of the Hobbs Act during the Taft-Hartley Act debates, this would have in no way shown that the Government's interpretation of the Hobbs Act was overly broad.

As a matter of fact, however, the court was simply wrong in suggesting that during the Taft-Hartley Act debates no one referred to the prohibitions of the Hobbs Act insofar as strike violence is con-

157. *Id.*
158. *Id.*
159. *Id.*
160. *Id.*
161. *See* Labor Management Relations Act § 8(b)(4)(A), 29 U.S.C. § 158(b)(4)(A) (1976).

cerned. In addition to making secondary boycotts, organizational picketing, and jurisdictional disputes unfair labor practices, the Taft-Hartley Act gave federal courts jurisdiction over private damage suits brought by a person injured as a result of such conduct. Senator Aiken, however, wanted to add an amendment which would also allow for injunctive relief in certain situations. He was specifically concerned with the small farmer who could not deliver his produce because of a labor dispute at the market, and for whom a damage action would be impractical. Senator Pepper, in discussing the proposed amendment said: "I do not recall exactly the terms of it, but last year we passed the Hobbs bill, the so-called antiracketeering bill, which gave jurisdiction to the federal court to act with respect to interruptions of and interference with people delivering their goods, in the way I think the Senator from Vermont has in mind."[162] Senator Aiken, however, responded:

> It has developed that the Hobbs bill was not worth the paper upon which it was written, so far as affording any protection to the farmer was concerned, because the farmer is not *molested* in taking his crop to the market, but when he arrives there may find that the commission man has an agreement for a closed shop, and the farmer cannot unload his produce, and therefore is turned back.[163]

Discounting the hyperbole, Senator Aiken was saying that the Hobbs Act is inadequate to solve the problem totally because it only applies to situations where the farmer has been "molested." The restraints upon delivery that are caused by certain kinds of agreements, secondary boycotts or jurisdictional strikes cause just as real an injury to the farmer, but are not covered by the Hobbs Act. However, the correlative of his statement is that the Hobbs Act does, in fact, cover acts of "molestation," including those that occur in connection with union activities that were, at the time he made this statement, not otherwise illegal under the existing labor statutes. In short, it would seem that the 1947 Congress *was* aware that the Hobbs Act applied to acts of violence aimed at achieving ends which were not otherwise illegal. This would tend to support the Government's position in the *Caldes* case rather than refute it.

In summarizing its overbreadth argument, the court noted that "it appears to us that acts of vandalism of the type committed by these appellants would be more properly and suitably prosecuted in the state courts and it is doubtful if Congress intended . . . to elevate this type of conduct to the level of the federal court."[164] The opponents of the Hobbs Act, of course, made exactly the same kind of assertion.[165] However, it was of no moment to the *Caldes*

162. 93 CONG. REC. 4860 (1947).
163. *Id.* (emphasis added).
164. 457 F.2d at 79.
165. *See, e.g.*, 89 CONG. REC. 3201, 3225 (1943); 91 CONG. REC. 11901 (1945).

court that the majority of Congress apparently felt otherwise.

As specious as the reasoning in the *Caldes* case was, the same result was eventually reached by the United States Supreme Court without any firmer basis insofar as legislative history or analysis is concerned. In *United States v. Enmons*,[166] the defendants were indicted for firing high-powered rifles at three utility company transformers, draining the oil from a company transformer, and blowing up a transformer substation owned by the company—all done for the purpose of obtaining higher wages and other employment benefits from the company for the striking employees. The indictment was, however, dismissed by the district court on the theory that the Hobbs Act did not prohibit the use of violence in obtaining "legitimate" union objectives.[167] On appeal, the Supreme Court affirmed, advancing four separate justifications for its conclusion.

First, the Court focused on the fact that the statute prohibited only the "wrongful" use of force to obtain property.[168] The Court noted that Congressman Hobbs intended the term "wrongful" to modify the entire section;[169] if it modified only the term "force" it would be redundant because any force to obtain property is wrongful. Therefore, the Court concluded that " 'wrongful' has meaning in the Act only if it limits the statute's coverage to those instances where the obtaining of the property would itself be 'wrongful' because the alleged extortionist has no lawful claim to that property."[170] The Court then added: "Construed in this fashion, the Hobbs Act has properly been held to reach instances where union officials threatened force or violence against an employer in order to obtain personal payoffs, and where unions used the proscribed means to exact 'wage' payments from employers in return for 'imposed, unwanted, superfluous and fictitious services' of workers."[171]

There are a number of things critically wrong with the Court's reasoning. First, the dilemma posed by the Court—"either construe the Act this way or make it redundant"—is essentially false since there are other possible interpretations. For example, one court of appeals previously suggested that "wrongful" referred to conduct constituting a breach of the peace in contrast to merely

166. 410 U.S. 396 (1973).
167. United States v. Enmons, 335 F. Supp. 641 (E.D. La. 1971), *aff'd*, 410 U.S. 396 (1973).
168. Specifically, the Act defines extortion as "the obtaining of property from another, with his consent, induced by *wrongful* use of actual or threatened force, violence or fear . . . ." 18 U.S.C. § 1951(b)(2) (1976) (emphasis added).
169. 410 U.S. at 399 n.2.
170. *Id.* at 400.
171. *Id.* (footnotes omitted).

tortious conduct.[172] This interpretation gives the term "wrongful" a meaning as a modifier of the term "force" that is certainly as reasonable as the interpretation suggested by the Supreme Court.

A more compelling explanation of the intended meaning of the term "wrongful" can, however, be found through a thoughtful reading of the legislative history. As previously indicated, many of the opponents of the Hobbs Act were fearful that the Act would be construed to prohibit legitimate strikes and picketing.[173] Some of them even suggested that a strike is, by definition, the assertion of a form of force.[174] The Hobbs Act proponents answered, of course, that the right to strike was protected by various federal labor statutes; that the rights affirmatively guaranteed by those statutes were not taken away by the Hobbs Act; but that there was nothing in those statutes which gave unions the right to use violence in the course of the exercise of the right to strike.[175]

It is against this background that Congressman Hobbs assertion that the term "wrongful" "qualifies the entire section" must be viewed.[176] Congressman Voorhis, who was not an enthusiastic supporter of the bill, wanted to make sure that a simple threat to go on strike for higher wages would not be construed as extortion under the Act. He was advised that it would not. He then immediately asked the additional question, "Does the word 'wrongful' apply to entire section?"[177] Presumably he wanted to make doubly sure that a *peaceful* strike would also not be considered wrongful under the Hobbs Act. Congressman Hobbs, in response to the question, then said that term wrongful "qualifies the entire section."[178] Congressman Hobbs undoubtedly intended this statement to assuage Congressman Voorhis' fears that the Act, notwithstanding the proviso, might be so broadly construed as to prohibit even peaceful strikes. In other words, Congressman Hobbs was saying that even if strikes are considered a form of coercion or force, they are not "*wrongful* force" unless accompanied by violence. This interpretation easily removes the redundancy which so concerned the Court.

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172. Bianchi v. United States, 219 F.2d 182 (8th Cir.), *cert. denied*, 349 U.S. 915 (1955).
173. *See, e.g.*, 89 CONG. REC. 3194, 3218 (1943); 91 CONG. REC. 11901 (1945).
174. Congressman LaFollette, for example, said that "[o]f course, there is an element of coercion in strikes. It is the only right labor has." 91 CONG. REC. 11920 (1945).
175. *See* 89 CONG. REC. 3193, 3202 (1943); 91 CONG. REC. 11904-05 (1945).
176. This assertion, and other matters summarized in the text, occured in the course of remarks among Congressmen Voorhis, Sumners, and Hobbs, recorded at 91 CONG. REC. 11908 (1945).
177. *Id.*
178. *Id.*

Even if the Court correctly concluded that the operative effect of the term "wrongful" in the statute is to identify the objective toward which the force must be directed in order for it to constitute extortion, the Court's reasoning on this point is still subject to question. It is based on the strange assumption that a person has no "lawful claim" to wages which are paid for unwanted services, as in the *Green* case, but that he does have such a claim to wages higher than those the employer would voluntarily pay in the absence of force "in return for genuine services which the employer seeks,"[179] as in the *Enmons* case. However, the distinction is analytically vacuous. A person has a no more "lawful claim" to work at $5.00 an hour for an employor who wants to pay only $4.75 than does another person who wants to work for an employer who does not want this person's services at all. In either case, the would-be employee's "lawful claim" to wages is dependent upon the employer's voluntary or noncoerced agreement to pay such wages. Nevertheless, on the basis on a non-existent distinction, the Court would apply the statute in one case but not the other.

The Court's second justification is somewhat related to this latter point; the Court simply claimed that "[t]he legislative framework of the Hobbs Act dispels any ambiguity in the wording of the statute and makes it clear that the Act does not apply to the use of force to achieve *legitimate* labor ends."[180] To support this extraordinary proposition, the Court first relied on the fact that Congress undoubtedly wanted to overrule the *Local 807* case which had permitted union members to "use their protected status to exact payments from employers for imposed, unwanted, and superfluous services"[181]—presumably *not* a "legitimate" labor objective, although the Court does not explain why. Assuming that overruling that aspect of the *Local 807* case was the limited intent of Congress, the Court then inferred an intent *not* to prohibit violence in the pursuit of "legitimate" objectives. In support of this conclusion, the Court referred to several assertions made during the debates to the effect that the bill was not intended to interfere "with any legitimate activity on the part of labor people or labor unions."[182]

This chain of reasoning is weak at almost every link. For example, the Court did not provide an *objective* basis for distinguishing "legitimate" labor goals from "illegitimate" ones—a basis which could be used to differentiate the objectives being pursued by the union in *Green* from those being pursued by the labor union in

179. 410 U.S. at 400.
180. *Id.* at 401 (emphasis added).
181. *Id.* at 403.
182. *Id.* at 404 (quoting 91 CONG. REC. 11908 (1945) (remarks of Rep. Sumners)).

Enmons.[183] In neither case were the objectives independently illegal, that is, illegal regardless of the means used to achieve them. Also, while it is undoubtedly true that Congress intended to reverse the *Local 807* case, an impartial reading of the legislative history suggests that Congress was *at least* as concerned with the means that were being used in that case as it was with the ultimate objective being pursued. Finally, the statements relied upon by the Court to the effect that the Act would not affect "legitimate" labor activity must be construed in *pari materia* with the more specific assurances that this result would be accomplished by the proviso guaranteeing that the existing labor statutes would not be modified or repealed. This guarantee was, however, tempered by the repeated reminder that these statutes in no way gave labor unions the right to use force or violence.[184]

In short, from conclusion that the Act was not intended to prohibit "legitimate" labor activities, one simply cannot infer that the legitimacy of the objective justifies whatever means are used to achieve it.

The inference not only does not flow from the legislative history; indeed, it is affirmatively contradicted by it. Congressman Hobbs' *single* objection to Congressman Celler's amendment was that it would allow conduct which was aimed at "lawful" ends to escape the prohibitions of the Act even though the conduct itself was "unlawful."[185] By rejecting the Celler amendment, Congress necessarily also rejected the interpretation given to the Act by the Supreme Court in *Enmons*: that the legitimacy of the ends sought remove whatever means are used to achieve them from the prohibitions of the statute. Furthermore, while the Court was correct in saying that the Celler amendment was rejected because it "would have operated to continue the effect of the *Local 807* case,"[186] the Court was grossly incorrect in asserting that it was done "solely"[187] for that reason, and that "undoing the restrictive impact of that case"[188] *merely* means that violence directed at otherwise "illegitimate" ends is now illegal under federal law. To

183. In *Enmons*, the objective of the violence was simply to obtain a more favorable collective bargaining agreement, an obviously legitimate goal in itself, while in *Green* the objective was to obtain job opportunities for union members, a similarly legitimate and entirely traditional goal of the labor movement. *Cf.* United States v. Green, 246 F.2d 155, 160 (7th Cir. 1957) ("There is no doubt that unions have the right to settle disputes [such as the one involved in that case] peacefully by means of negotiation . . . ."); *see also* note 151 *supra*.

184. *See* notes 173-78 & accompanying text *supra*.

185. *See* notes 89-90 & accompanying text *supra*.

186. 410 U.S. at 408.

187. *Id.*

188. *Id.*

the contrary, it would appear that the legislative overruling of *Local 807* had a much broader purpose.

The *only* specific language in the legislative history from which the Court could derive support for its interpretation was a single, obscure dialogue between Congressman Marcantonio and Hobbs.[189] However, as was previously discussed,[190] that exchange cannot be construed as a condonation by Hobbs of violence directed toward achieving a "legitimate" end. The Court's reliance on this exchange in support of its interpretation of the statute is unwarranted if not totally misplaced.

The third justification advanced by the Court scarcely deserves mention. The Court simply noted that "[i]n the nearly three decades that have passed since the enactment of the Hobbs Act, no reported case has upheld the theory that the Act proscribes the use of force to achieve legitimate collective-bargaining demands."[191] The Court, without explanation, here cited *Green* and *Kemble* as cases allegedly involving "illegitimate" labor demands, and cited *Caldes* as a case involving "legitimate" labor demands where the indictment was properly dismissed. These cases, however, are either unpersuasive or simply not supportive of the Court's theory.

Nevertheless, from all this the Court concluded that Congress did not intend to legislate the manner in which labor enforced its various demands, since "[i]t is unlikely that if Congress had indeed wrought such a major expansion of federal criminal jurisdiction in enacting the Hobbs Act, its action would have so passed unobserved."[192] To say the least, this is a rather novel theory of statutory interpretation and one certainly not adhered to in other contexts.[193]

Finally, in justifying its narrow interpretation of the Hobbs Act, the Court trotted out its "parade of horribles." The Government's theory, the Court said:

> [W]ould cover all overtly coercive conduct in the course of an economic strike, obstructing, delaying, or affecting commerce. The worker who threw a punch on a picket line, or the striker who deflated the tires on his employer's truck would be subject to a Hobbs Act prosecution and the possibility of 20 years' imprisonment and a $10,000 fine.[194]

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189. *See* text accompanying note 105 *supra*.
190. *See* text accompanying notes 105-09 *supra*.
191. 410 U.S. at 408.
192. *Id.* at 410.
193. For example, it apparently "passed unobserved" for roughly a hundred years that in the Civil Rights Act of 1866 Congress intended to prohibit purely private as well as public discrimination. However, this did not prevent the Court from so holding in the first case where the issue was squarely presented. Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968).
194. 410 U.S. at 410 (footnotes omitted).

In the first place, as has been suggested before, a reasonable interpretation of the Hobbs Act need *not* include within its ambit *all* violence connected with a strike; in many instances either the victim or the purpose is different than would be required in order to constitute "extortion."[195] Moreover, if it is unlikely that Congress intended to severely punish a person who slices tires in the course of a strike to obtain $.50 more per hour, it is certainly no more likely that Congress intended to impose such punishment when that particular conduct occurs in the course of a strike to obtain additional but unwanted work for union members; yet that result could be reached even under the Court's theory. There is, in short, simply no logical relationship between the Court's concern over excessive punishments and its theory that the Act should therefore be limited to conduct having an "illegitimate" objective.

In addition, the Court apparently lost sight of the fact that the Hobbs Act, like many other statutes, merely establishes the *maximum* possible punishments. While it is true that the opponents of the Hobbs Act thought these sanctions might be potentially excessive if applied to the so-called "milder" forms of labor violence,[196] the majority in Congress either felt otherwise or knew that judges would exercise the discretion inherent in their function and mold the punishment to fit the crime.[197] In any event, the Court's concern that an overzealous tire slasher might be fined to the point of impoverishment and incarcerated for the better part of his life is neither a necessary nor even a proper basis for construing the statute the way the Court did.

In sum, none of the reasons advanced by the Court for its reading of the statute can withstand hard analysis. The Court's distortion of the legislative history is particularly disturbing, and it was primarily this that led Mr. Justice Douglas, dissenting, to state:

> At times, the legislative history of a measure is so clouded or obscure that we must perforce give some meaning to vague words. But where, as here, the consensus of the House is so clear, we should carry out its purpose no matter how distasteful or undesirable that policy may be to us . . . .[198]

The purpose, which Mr. Justice Douglas found evident from a careful review of the legislative history, was simply that "[t]he regime of violence, *whatever its precise objective*, is a common device

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195. *See* text following note 109 *supra*.

196. *See, e.g.*, 89 CONG. REC. 3201 (1943), where Congressman Celler voiced the concern that the bill may permit simple assaults to be converted into felonies.

197. *See* Livers v. United States, 185 F.2d 807, 809 (6th Cir. 1950) ("In the enactment of our national laws against crime, the Congress has vested United States District Judges with wide discretion in assessing punishment within the limits of the various federal statutes.").

198. 410 U.S. at 418 (Douglas, J., dissenting) (footnotes omitted).

of extortion and is condemned by the Act."[199] With respect to the majority's position, he bluntly but correctly observed that "[t]he Court today achieves by interpretation what those who were opposed to the Hobbs Act were unable to get Congress to do."[200]

C. Current Ambiguities in the Law

Although the *Enmons* decision resolved the specific issue that was before the Court, the opinion at the same time created two glaring points of uncertainty. First, the Court's holding that the Act does not apply to the enforcement of "legitimate" union demands leaves open the question of what exactly an "illegitimate" union demand might be. At the very least, if the sought-after payment would itself be illegal, whether obtained through force or otherwise, a demand for such payment would potentially be within the purview of the Hobbs Act even under the *Enmons* decision. This would appear to cover certain proscribed payments by an employer to any representative of his employees,[201] as well as employer payments into pension funds, check-off payments, and other such payments when not done according to the strict mandates of the law.[202] Arguably, the payment of wages in excess of either mandatory wage guidelines or the terms of a collective bargaining agreement containing a no-strike clause could be included as well. True "featherbedding" would almost certainly be considered a proscribed objective.[203] An employer's requirement that his employees pay union dues in the absence of a valid union security agreement or each individual's voluntary agreement to pay would also seem to qualify,[204] as would the illegal recognition of a union.[205]

More troublesome, however, are those objectives which are not intrinsically "unlawful" but which are, nevertheless, susceptible to being called "illegitimate." The existance of this category is a nec-

199. *Id.* (emphasis added).
200. *Id.* at 413.
201. *See* United States v. Quinn, 514 F.2d 1250 (5th Cir. 1975), *cert. denied*, 424 U.S. 955 (1976). Under the circumstances of that case, the payment of the money was itself thought by the court to be an independent violation of the Taft-Hartley Act, 29 U.S.C. § 186(a) (1976), which generally prohibits payments by an employer to the representative of his employees, thus making it an "illegitimate" objective under the *Enmons* approach.
202. *See, e.g.*, 29 U.S.C. § 186(c)(4) & (5) (1976) (pertaining to payments made under check-off authorizations and employer contribution into pension funds).
203. *See* 29 U.S.C. § 158(b)(6) (1976); United States v. Arambasich, 597 F.2d 609 (7th Cir. 1979); United States v. Callahan, 551 F.2d 733 (6th Cir. 1977).
204. *See* 29 U.S.C. § 158(a)(3) (1976).
205. *See* United States v. Jacobs, 543 F.2d 18 (7th Cir. 1976), *cert. denied*, 431 U.S. 929 (1977).

essary, though perhaps unintended,[206] corollary of the fact that the Court in *Enmons* clearly reaffirmed the *Green* decision. In point of fact, the objective of the union in *Green* was not independently unlawful. Although the union may have been seeking wages for services which the employer felt he did not need, the union members were apparently willing to actually do the work, and thus *Green* was not a true case of "featherbedding" in the statutory sense.[207] What other kinds of "illegitimate" but not unlawful objectives the Court might have in mind is subject only to speculation.[208]

As has been shown, one source of ambiguity stems from the Court's conclusion in *Enmons* that "illegitimacy" of the objective is a necessary element of a Hobbs Act offense. Another ambiguity which the decision creates is whether physical force or violence is also a necessary element. Under prior case law it clearly was not. One of the recurring issues in the cases involving demands for personal payoffs to union officials was whether such demands, when backed *merely* by threats of strikes, picketing, or other presumably peaceful "labor difficulties," could constitute extortion under the Hobbs Act, or whether either actual force or threatened force was required. The courts had consistently held that "[r]easonable fear of economic loss was enough to come within the statute."[209] The court in *United States v. Varlack*[210] explained:

> [I]t is . . . clear that it was not the intention of the Congress to interfere with the exertion of peaceful economic pressures by a union through the medium of strikes to achieve *legitimate* labor objectives. But it does not follow . . . that only violence or threats of violence are covered by the Act and that the Act is not violated when union leaders or representatives obtain . . . personal enrichment by using their . . . influence to instill in the minds of the employers with whom they deal a fear of work stoppages or the prolongation of strikes.[211]

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206. The Court may have simply misread the *Green* decision, for there is some suggestion in the opinion that the Court viewed the facts in *Green* as substantially similar to those in the *Local 807* case. *See* 410 U.S. at 408. This, however, is not accurate in that, in at least some instances, the union members in *Local 807* did not even offer to do any work, thus making it a case of true "featherbedding," and, under *current* law at least, an illegitimate union objective. *See* note 151 *supra*. There was no suggestion of that in *Green*.
207. *See* note 151 *supra*; *see also*, United States v. McCullough, 427 F. Supp. 246 (E.D. Pa. 1977).
208. In United States v. Warledo, 557 F.2d 721 (10th Cir. 1977), a non-labor case, members of a certain Indian tribe were indicted for attempting to obtain money from a railroad to redress past wrongs against the tribe. Payment by the railroad would not, of course, have been illegal, and they alleged that their belief in the validity of their claim was sufficient to bring them within the *Enmons* exception. The Court of Appeals disagreed. "To say that the pursuit of a payment from the railroad for *alleged* past wrongs is not wrongful taxes the statutory language to a highly unreasonable degree." *Id.* at 730.
209. United States v. Stirone, 262 F.2d 571, 575-76 (3d Cir. 1958).
210. 225 F.2d 665 (2d Cir. 1955).
211. *Id.* at 669.

Thus, the case law seemed to stand for the symmetrical proposition that it was extortion if *either* the ends *or* the means were independently illegal.[212] By requiring an "illegitimate" objective in every case, *Enmons* necessarily destroyed this formulation, but it is not clear what the decision provides by way of substitution. There are two alternatives: Actual legality of the means used is no longer a relevant factor at all, thus making the "illegitimacy" of the ends both a necessary and a sufficient condition of the violation; or *both* illegitimate ends *and* otherwise illegal means (violence or threats of violence) are now necessary for a violation of the Act.

The Court's statement in a footnote to its discussion of the term "wrongful," in *Enmons* is relevant to this issue:

> The Government suggests a convoluted construction of "wrongful." It concedes that when the means used are not "wrongful," such as where fear of economic loss from a strike is employed, then the objective must be illegal. If, on the other hand, "wrongful" force and violence are used, even for a legal objective, the Government contends that the statute is satisfied.[213]

The Government's theory was, of course, consistent with the either/or proposition suggested above. In this footnote the Court was clearly rejecting the proposition that the means alone can render a demand illegal. Whether they were also rejecting the proposition that the ends alone can render a demand illegal, is only problematical. That such was *not* the Court's intent can perhaps be deduced from the fact that the Court also said that "the Hobbs Act has properly been held to reach instances where union officials threatened force or violence against an employer in order to obtain personal payoffs . . . ."[214] The Court here cited three lower court cases which stand unequivocally for the proposition that fear of economic loss, brought about by otherwise peaceful and not illegal strikes or picketing, can rise to the level of extortion under the Hobbs Act, provided the end being sought is itself an illegitimate one.[215] Presumably, the Supreme Court was of the same view.

On the other hand, there *is* specific language in the legislative history to suggest that the typical "shake down," where a union official uses his power to call or prolong strikes as a form of threat

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212. Comment, *Featherbedding and the Federal AntiRacketeering Act*, 26 U. CHI. L. REV. 150, 159 (1958).
213. 410 U.S. at 400 n.3.
214. *Id.* at 400 (footnote omitted).
215. United States v. Iozzi, 420 F.2d 512 (4th Cir. 1970); United States v. Kramer, 355 F.2d 891 (7th Cir.), *cert. granted and case remanded for resentencing*, 384 U.S. 100 (1966); Bianchi v. United States, 219 F.2d 182 (8th Cir.), *cert. denied*, 349 U.S. 915 (1955).

to induce an employer to make personal payoffs, is not extortion in the statutory sense. Presumably, Congress intended to not involve itself through the Hobbs Act in otherwise peaceful strikes and picketing. In dialogue supporting this proposition, Congressman Sumner stated: "There have been complaints that in the case of strikes an attorney has gone in and asked an operator something like $15,000 or $20,000 as a shakedown to stop a strike. Is there anything in this bill about that?"[216] Congressman Jennings responded: "Not a thing. This does not have a thing in the world to do with strikes."[217]

Since *Enmons*, there have been a number of cases where the courts have indicated that union officials can be convicted for extorting money or other benefits through threats of "economic harm" to an employer.[218] Apparently, the implications of *Enmons* on this issue and the significance of that bit of legislative history have not been discussed. This, however, is a matter of some concern. Where the end is affirmatively illegal, as in the personal payoff situations, perhaps the threatened use of economic force can be called "extortion" without doing undue violence to the term. However, where the "illegality" flows from the fact that the objective is inconsistent with a previously agreed to contract term, one begins to get a little uneasy. Is it proper to make it a "crime" to strike to achieve such an objective? Regardless of one's judgment on this question, it is quite another matter to label as "extortion" the threatened use of *otherwise* peaceful and legal economic force for the purpose of achieving an end which is itself *merely* "illegitimate," as in the *Green* case. Although it seems unlikely that anyone would ever be convicted of extortion for striking in order to require a railroad to hire a "fireman" for a diesel locomotive, such a result flows logically from the *Enmons* decision. This is because the Court in *Enmons* characterized the objective of the union in *Green* as being "illegitimate" even though it was not in fact affirmatively illegal, and suggested that the use of economic force with respect to such ends can be considered extortionate. On the other hand, if the Court did not intend that result, one is necessarily left with the conclusion that the theoretical underpinnings of *Enmons* are hopelessly ambiguous. In either event, some clarification by the Court is certainly in order.

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216. 91 CONG. REC. 11912 (1945).
217. *Id.*
218. *See, e.g.*, United States v. Arambasich, 597 F.2d 609 (7th Cir. 1979); United States v. Nell, 570 F.2d 1251 (5th Cir. 1978); United States v. Daley, 564 F.2d 645 (2d Cir. 1977), *cert. denied*, 435 U.S. 933 (1978).

IV. PENDING LEGISLATION

At the time of the *Enmons* decisions, revisions to the Hobbs Act were already in the process of formulation. In 1966, Congress created the National Commission on Reform of Federal Criminal Laws,[219] commonly called the "Brown Commission" after its chairman, Edmund G. Brown, former Governor of California. The mandate of this Commission was to study the existing body of federal criminal laws, including the Hobbs Act, and to make recommendations to Congress for revision and recodification. In 1971 the Commission submitted its final report, consisting primarily of a proposed draft of a federal criminal code with brief comments for each section.[220] Under this code, extortion, a separate offense under the Hobbs Act, was simply treated as a form of theft. Section 1732 provided that: "A person is guilty of theft if he: . . . (b) knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of his property by deception or by threat . . . ."[221] Section 1741 further provided that

> 'threat' means an expressed purpose, however communicated, to (i) cause bodily injury in the future to the person threatened or to any other person; or (ii) cause damage to property; or (iii) subject the person threatened or to any other person to physical confinement or restraint . . . or (x) bring about or continue a strike, boycott, or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent; or (xi) cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes . . . .[222]

Part (x) of the definition stated that a strike or boycott which is not for the purpose of obtaining benefits for the whole group, as in the typical "payoff" or "shakedown" situation, is to be considered illegal. Presumably this is true even though the strike or boycott is an otherwise peaceful one. It also seems clear from the structure of the definition that violence intended to coerce the settlement of a strike (*i.e.*, causing bodily injury, property damage, or physical restraint to obtain an otherwise legitimate group benefit) is also illegal. Finally, as the comments to this section of the draft make clear, part (xi) was clearly designed to exclude from the coverage of the section any threatened or actual enforcement of a union security agreement as long as the dues received under threat of dis-

219. Act of Nov. 8, 1966, Pub. L. No. 89-801, 80 Stat. 1516, *as amended*, Act of July 8, 1969, Pub. L. No. 91-39, 83 Stat. 44.

220. *Reform of the Federal Criminal Laws: Hearings Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, Part I*, 92d Cong., 1st Sess. 129 (1971) [hereinafter cited as *Hearings, Part I*].

221. *Id.* at 359.

222. *Id.* at 373-74.

charge were used for lawful union purposes.[223] Thus, the Brown Commission draft would not have accomplished any major changes in the Hobbs Act as it had been construed before *Enmons*.

The Brown Committee report was submitted to Congress, where it was referred to the Senate and House Committees on the Judiciary and to the President, who created a Criminal Code Revision Unit within the Department of Justice for further study and revision. The Senate Committee's end product, after two years of hearings, was bill S. 1,[224] introduced by Senators McClellan, Hruska and Ervin on January 4, 1973.[225] Although it was derived from the Brown Committee draft, S. 1 differed from that draft in many ways. With respect to the extortion provisions, S. 1 opted in favor of a return to the carefully hammered out language of the existing Hobbs Act. Section 2-9C3 provided that: "A person is guilty of extortion if he intentionally obtains services or property of another from another person, with the consent of the other person, where such consent is induced by wrongful use of actual or threatened force, violence or fear, or under color of official right."[226]

The section-by-section explanation of S. 1 simply stated that "[t]he language is taken from [section] 1951 to carry forward its judicial construction,"[227] presumably including, insofar as Supreme Court cases are concerned, the *Green* decision. It is significant to note that the *Enmons* decision, appearing on February 22, 1973, had not been handed down at the time this explanation was written.

In the meantime, the Criminal Code Revision Unit of the Justice Department had also been working on a draft criminal code. S. 1400[228] was introduced by Senators Hruska and McClellan on March 27, 1973[229] after *Enmons* had been rendered, and was clearly drafted with the intent of repudiating the decision. Section 1722(a) provided that: "A person is guilty of an offense if he knowingly obtains property of another by force, or by threatening or placing another person in fear that any person will be subjected to bodily

223. *Id.* at 374.
224. S. 1, 93d Cong., 1st Sess. (1973); *Reform of the Federal Criminal Laws: Hearings on S. 1, S. 716, S. 1400, S. 1401 Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, Part V*, 93d Cong., 1st Sess. 4211-748 (1973) [hereinafter cited as *Hearings, Part V*].
225. 119 CONG. REC. 92 (1973).
226. *Hearings, Part V, supra* note 224, at 4346.
227. *Id.* at 4786.
228. S. 1400, 93d Cong., 1st Sess. (1973), *Hearings, Part V, supra* note 224, at 4862-5197.
229. 119 CONG. REC. 9634 (1973).

injury or kidnapping or that any property will be damaged."[230] The explanation to this section of the bill said that it was "worded to overcome the adverse effects of a recent Supreme Court opinion construing the legislative intent as to one aspect of the existing statute in an unusually restrictive manner."[231] Presumably, the authors of S. 1400 believed that they accomplished this by the omission of the word "wrongful" in the definition of the crime, since the rationale of the *Enmons* decision hangs fairly heavily on the presence of that word in the Hobbs Act.

Hearings were subsequently held on all three versions of a proposed federal criminal code—the Brown Commission draft, S. 1, and S. 1400. On January 15, 1975, Senator McClellan, for himself and several other Senators, introduced a new S. 1[232] which incorporated elements of all three of the proposals. Significantly, this S. 1 adopted the language of S. 1400 insofar as extortion was concerned, and the draft report clearly indicated that the Subcommittee intended to overrule the *Enmons* decision.[233] Some doubt was expressed, however, as to whether the language used was capable of having that effect. A statement by the Associated Builders and Contractors suggested that in order to make the matter clear the following be added after the final word "damaged" in section 1722(a): "Notwithstanding that the same acts or conduct may also be a violation of state or local law, and notwithstanding that such acts or conduct were used in the course of a legitimate labor dispute or in the pursuit of legitimate union or labor ends or objectives."[234] The second S. 1, with some amendments, was reported by the Subcommittee on Criminal Laws and Procedures to the full Committee on the Judiciary on October 21, 1975, where the bill was allowed to die.

The next step was taken on May 2, 1977, when Senators McClellan and Kennedy introduced S. 1437,[235] the Criminal Code Reform Act of 1977.[236] This bill allegedly represented a compromise on several controversial and important points, the lack of agreement on which had kept prior bills from moving through the legislative

230. *Hearings, Part V, supra* note 224, at 5966.
231. *Id.* at 4847.
232. S. 1, 94th Cong., 1st Sess. (1975).
233. SENATE COMMITTEE ON THE JUDICIARY, 94TH CONG., 2D SESS., DRAFT REPORT TO ACCOMPANY S. 1 644-59 (Comm. Print 1975).
234. *Reform of the Federal Criminal Laws: Hearings on S. 1 Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, Part XII*, 94th Cong., 1st Sess. 215 (1975).
235. 123 CONG. REC. S6831 (daily ed. May 2, 1977).
236. S. 1437, 95th Cong., 1st Sess. (1977), *Reform of the Federal Criminal Laws: Hearings on S. 1437 Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, Part XIII*, 95th Cong., 1st Sess. 9485-792 (1977) [hereinafter cited as *Hearings, Part XIII*].

process. The extortion offense, however, was again simply defined, as obtaining property of another "(1) by threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged; or (2) under color of official right."[237]

The Committee Report on S. 1437[238] contains an excellent summary of the then existing law with respect to extortion under the Hobbs Act and indicates approval of the judicial decisions holding that "fear" under the statute applies not only to fear of physical violence but also fear of economic harm to the victim's property or business. Moreover, the report is unequivocal in its repudiation of the *Enmons* "legitimate objectives" rationale. Noting that such an exception had not been recognized with respect to extortion by other persons, the Committee felt that labor union officials were not entitled to such a privileged treatment.

> The thrust of an extortion statute should be to punish violent extortionate means to obtain the property of another regardless of the legality of the ends sought, and this principle should apply in the collective bargaining context as well as elsewhere. Thus, an employer who blows up a union office or causes a union official to be assaulted in order to instill fear and thereby obtain property of the union ought to be guilty under the Act irrespective of whether the property could have been obtained lawfully through collective bargaining. And the same should be true in the reverse situation. Accordingly, the Committee has proposed in effect to overturn the *Enmons* result by treating the parties engaged in a labor dispute no differently from other persons in terms of the applicable prohibitions under this section, which is limited to extortionate means involving actual or threatened violence.[239]

The Committee Report, however, also responded to the concern expressed by the *Enmons* Court that minor acts of picket line violence might, but for a narrow reading of the statute, be elevated into a federal felony. The report noted that

> in the Committee's view such acts do not fall within the purview of the Hobbs Act (nor should they be Federally punishable) since there is no intent thereby to obtain the employer's property through the use of force and the acts do not in fact cause the employer to part with his property; in short, such isolated acts of violence do not partake of the nature of extortion.[240]

To insure that the Act would be construed in that fashion, the proposed extortion provision contained an additional section specifically recognizing that "[i]t is an affirmative defense to a prosecution under subsection (a)(1) that the threatened or feared injury or damage was minor and was incidental to peaceful picketing or other concerted activity in the course of a bona fide labor

237. *Id.* at 9602.
238. S. REP. NO. 605, 95th Cong., 1st Sess. (1977).
239. *Id.* at 624-25.
240. *Id.* at 624.

dispute."[241] Senator Kennedy, who introduced S. 1437 in the Senate, explained that "a defense is added to the extortion provision to make it clear that minor incidents occuring in the course of legitimate labor picketing are not punishable under the extortion statute."[242]

Immediately thereafter, however, Senator Kennedy introduced an amendment to the extortion provision which deleted the "affirmative defense" section altogether and substituted the following:

> (b) PROOF.—In a prosecution under subsection (a)(1) in which the threat or fear is based upon conduct by an agent or member of a labor organization consisting of an act of bodily injury to a person or damage to property, the pendency at the time of such conduct, of a labor dispute, as defined in 29 U.S.C. 152(9), the outcome of which could result in the obtaining of employment benefits by the actor, does not constitute prima facie evidence that property was obtained 'by' such conduct.[243]

In Senator Kennedy's view, the amendment simply clarified existing law, which, as he understood it, required proof not only of acts of violence but also of the fact that the violence was done with the intent of extorting. Beyond saying that and restating what the amendment itself said directly,[244] he offered no explanation.

Senator Thurmond's remarks, on the other hand, were considerably more enlightening. In explaining his lack of objection to the amendment, he noted that:

> This amendment would add a "proof" subsection designed to prevent a trial judge from holding that, in a case described in the new subsection, mere proof that personal injury or property damage occurred during a labor dispute constitutes a sufficient showing of the causal relationship between the obtaining of property and the threat of fear based on that injury or damage to justify submission of that issue to the jury. It prevents such a holding directly, by providing that proof of the coincidence of the labor dispute and the injury or damage in such a case is not "prima facie evidence" of the causal relationship. It is true, of course, that such a causal relationship sometimes does exist where injury or damage occurs during a labor dispute. This proposed subsection, however, is based on the belief that where there is a cause and effect relationship, or the intent to obtain property by means of a threat or fear resulting from injury or damage, it should be possible to prove, in addition to that coincidence, some other circumstances adding to the strength of the inference of causation.
>
> The proposed subsection does not address the question of which particular additional circumstance or circumstances, when proven along with that coincidence, will suffice to justify the submission of the issue to the jury. One which clearly would be sufficient in many cases to avoid a directed verdict is the circumstance that the defendant was, or conspired with, a person negotiating on behalf of the union involved in the labor dispute. The same result might obtain, where the repetitive or systematic

241. *Hearings, Part XIII, supra* note 236, at 9602-03.
242. 124 CONG. REC. S12 (daily ed. Jan. 19, 1978).
243. *Id.* at S17.
244. *Id.* at S17-18.

> nature of property damage, or its exact timing, contributed to an inference, based also on the fact that a labor dispute was pending at the time the damage was done, that the damage was purposeful rather than mindlessly vindictive.[245]

The amendment was adopted[246] and S. 1437 passed the Senate on January 30, 1978;[247] however, the bill was allowed to die in the House.

Undaunted by this lack of prior success, Senator Kennedy, on behalf of himself and several other Senators, reintroduced a proposed recodification of the federal criminal laws[248] in the Criminal Code Reform Act of 1979, S. 1722.[249] As introduced, the extortion provisions of this bill were identical to those as contained in S. 1437 as passed by the Senate.

Hearings were again held on this bill, and to at least some of the representatives of management the extortion provisions of the bill were apparently satisfactory. The published comments of the Associated Builders and Contractors, Inc. noted, for example, that the omission of the word "wrongful" in the Act properly eliminated the "legitimate objectives" exception read into the Hobbs Act by the Court in *Enmons*.[250] Furthermore, the comment stated that, properly construed, the "proof" provision was acceptable as well. In their view, if the violence was something more than a minor and unrelated incident, and the employer could testify "that there was a direct connection between the violence and his decision to increase benefits,"[251] then the requirements of the section would be satisfied and a prima facie case of violation made out.

For the most part representatives of organized labor agreed with this interpretation of the proposed statute, and, for that reason, were vehemently opposed to it. They objected to the overruling of the *Enmons* decision by elimination of the term "wrongful" in the definition of extortion on many of the same policy grounds that were advanced by the Court in that case. Witnesses cited numerous reasons why *Enmons* should not be overruled: The danger of making minor picket line misconduct a federal criminal felony; the danger of overactive and politically ambitious prosectors using this as an excuse to intrude unnecessarily into strike situations; the resulting unwarranted incursion of federal jurisdiction into an

245. *Id.* at S17.
246. *Id.* at S18.
247. *Id.* at S860.
248. 125 CONG. REC. S12204 (daily ed. Sept. 7, 1979).
249. S. 1722, 96th Cong., 1st Sess. (1979), *Reform of the Federal Criminal Laws: Hearings on S. 1722, S. 1723 Before the Senate Committee on the Judiciary, Part XIV*, 96th Cong., 1st Sess. 11090-484 (1979) [hereinafter cited as *Hearings, Part XIV*].
250. *Hearings, Part XIV*, *supra* note 249, at 10707.
251. *Id.*

area traditionally left to the states; the disruption of the balance already struck by Congress in the labor-management relations area; the chilling effect upon the exercise by employees of other federally protected rights; and the existence of other remedies for labor violence.[252]

Moreover, the "proof" provision was regarded by labor as inadequate to guard against the evils that would result from making labor activity generally subject to the statute. Thomas X. Dunn, General Counsel for the Building and Construction Trades Department, AFL-CIO, stated:

> It is clear that section 1722(b) is designed to create an additional burden of proof in prosecutions for misconduct which occurs in the course of a labor-management dispute. The Government would be required to establish a nexus between the alleged misconduct and the obtaining of otherwise legitimate employment benefits. As a practical matter, however, this burden of proof could be satisfied easily in almost every economic strike where misconduct occurs. It appears that all that the Government need do to satisfy its burden is present the employer involved in the strike who will testify that the alleged violence or threat of violence was a factor in his decision to agree to workers' demands for higher wages or other employment benefit.
>
> Thus, section 1722(b) would not be an effective means of discouraging the Government from applying the proposed extortion statute to any misconduct which occurs in the course of an economic strike.[253]

Robert M. Baptiste, Counsel for the International Brotherhood of Teamsters, expressed a similar sentiment:

> While the amendment was proposed in "recognition that tempers often flare in labor disputes" and all strike-related misconduct should not be a Federal criminal offense, we submit that the proof provisions can so easily be satisfied that virtually all economic strikes where misconduct occurs could be subject to this new Federal extortion penalty.[254]

Lance Compa, Washington Representative of the United Electrical, Radio and Machine Workers of America, was fearful of the undesireable consequences that could result if the interpretation advanced by Senator Thurmond[255] was taken as controlling. He stated:

> Furthermore, Senator Thurmond offered a detailed interpretation of the Kennedy Amendment that constitutes dangerous legislative history. Senator Kennedy made no careful explanation of his amendment. Senator Thurmond said the proof requirement would not be necessary if the defendant "was or conspired with" a union negotiator or if the damage was "repetitive," "systematic" or "purposeful rather than mindlessly vindictive."
>
> Applying this interpretation would, first of all, chill any contact between a union negotiating committee and the rank and file members. In-

252. *Id.* at 10045-48, 10691-92.
253. *Id.* at 10693.
254. *Id.* at 10049.
255. *See* note 245 & accompanying text *supra*.

stead of keeping a firm hand on the strike—which is essential if the committee is to be effective at the bargaining table—a committee will be forced into a "hear no evil, see no evil" position, sequestered from the membership in order to avoid possible prosecutions. Even so, a prosecutor out to nail an aggressive union leader could frighten or entice with promises of immunity a rank and file member to implicate the union official in some damage.

Second, the "purposeful rather than mindlessly vindictive" interpretation effectively removes any protection the Kennedy Amendment might have provided, since any damage in a strike, misguided as it may be, is connected to the purpose of winning the strike.[256]

As drafted, the extortion provisions of S. 1722 represented a compromise which could not be held together because of the strong opposition of organized labor. This, however, opened the door anew to the full range of possibilities including reaffirming the *Enmons* approach in its entirety, on the one hand, or providing no special exemptions for labor, on the other, as well as several intermediate possibilities.

Eventually, a new compromise was hammered out. It was agreed that the basic definition of the offense of extortion would remain the same, but that the "proof" provision would be replaced with a "bar to prosecution" provision; the "grading" and "jurisdiction" provisions remained unchanged. In relevant part, the extortion section, as finally approved and reported out by the Senate Judiciary Committee, reads as follows:

§ 1722. EXTORTION.

(a) OFFENSE.—A person is guilty of an offense if he obtains property of another—

(1) by threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged; or

(2) under color of official right.

(b) BAR TO PROSECUTION.—It is a bar to prosecution under this section that the offense occurred in connection with a labor dispute as defined in 29 U.S.C. 152(9) to achieve legitimate collective bargaining objectives, unless there is clear proof that the conduct which constitutes the threat or placing in fear required under subsection (a)(1) consists of a felony and the conduct was engaged in for the purpose of causing death or severe bodily injury in order to secure such objectives; and the Attorney General, Deputy Attorney General, or Assistant Attorney General for the Criminal Division certifies in writing that—

(A) the facts establish the existence of the additional elements of the offense required under this subsection;

(B) a federal prosecution should be commenced under this section; and

(C) the State is unable or unwilling to proceed with any equivalent prosecution relating to such conduct.[257]

256. *Hearings, Part XIV, supra* note 249, at 10764.

257. S. 1722, 96th Cong., 2d Sess. (1980) (as reported with amendments).

The Committee Report summarized the compromise in these terms: "The Committee has concluded over the objection of a substantial minority that, except in the circumstances set forth in subsection (b) of section 1722, for the purposes of this bill the *Enmons* decision should not be modified."[258] The Committee, in other words, was willing to accept the *Enmons* proposition that the "legitimacy" of a union's objective was sufficient to justify even the use of physical violence to achieve it, at least in the sense of rendering the violence not illegal under federal law. "On the other hand, the Committee believes that the thrust of an extortion statute should be to punish violent extortionate means to obtain the property of another regardless of the legality of the ends sought and has carried forward current law to that effect in situations not involving a labor dispute."[259]

That is what the proposed statute says, but what it means is another matter. For example, S. 1722 does nothing to clarify the two main ambiguities of the existing case law. By carrying forward the *Enmons* rationale of "legitimate" union objectives, the proposed statute also carries forward the ambiguities associated with that rationale.[260] Furthermore, the Committee Report on the bill does nothing to clarify the ambiguity. At one point the report notes that the Committee intended to reaffirm the *Enmons* principle "to the effect that labor officials were not covered for their extortionate activities against employers in the course of a labor dispute, if the objective sought was *a permissible goal of collective bargaining*."[261] Similarly, in discussing the meaning of the phrase "legitimate collective bargaining objectives," the Committee Report notes that this "encompasses activities to secure *non-corrupt* labor union objectives even if, as in *Enmons*, those activities would violate other laws and excludes such objectives as efforts to obtain personal payoffs or payments for superfluous services."[262]

The difficulty, as with the *Enmons* decision itself, is in fitting the *Green* facts into such a formulation. Although the objective sought in *Green* was certainly to obtain "payments for superfluous services," in the colloquial sense, as a legal matter the objective was both "non-corrupt" and "a permissible goal of collective bargaining"; yet a violation was found to exist in that case, undoubtedly because of the presence of violence. The Committee, like the Court in *Enmons*, obviously did not intend to overrule *Green*. However, since the presence of violence is no longer a sufficient

258. S. REP. No. 553, 96th Cong., 2d Sess. 645 (1980).
259. *Id.*
260. *See* § III-C of text *supra*.
261. S. REP. No. 533, 96th Cong., 2d Sess. 649 (1980) (emphasis added).
262. *Id.* at 651 (emphasis added).

condition for a violation, the reconciliation of results of *Green* with the wording of the proposed statute is somewhat less than obvious.

With respect to the second major ambiguity, the Committee Report does make it clear that the damage to property referred to in the definition of extortion includes only *physical* damage to property and does not include mere economic loss or injury. Those kinds of Hobbs Act injuries were, the Committee Report notes, intended to be covered by the proposed section on blackmail rather than the extortion section.[263] Section 1723 provides that "a person is guilty of an offense [of blackmail] if he obtains property of another by threatening or placing another person in fear that any person will . . . (4) improperly subject any person to economic loss or injury to his business or profession . . . ."[264] The Committee Report comments that

> [t]his carries forward . . . the present reach of the Hobbs Act, . . . as interpreted by judicial decisions. It is designed to make clear that this section does not reach legitimate activity, such as strikes, boycotts, or picketing activity undertaken in support of such objectives as increased wages or improved working conditions for employees.[265]

The significance of this language should be readily apparent. The word "improperly," as used in the proposed section on blackmail, is obviously intended to have the same connotation as the word "wrongful" contained in the Hobbs Act and construed by the Supreme Court. This means that the objective must be an "illegitimate" one. So construed, the blackmail section ties in nicely with the extortion section. If the objective being sought is other than a "legitimate" one, the extortion section is relevant if the "means" involve threats of physical damage to person or property, but if the "means" involve mere threats of economic injury, the blackmail section is relevant.

With respect to the latter, an unduly broad definition of "illegitimate" (*i.e.*, broad enough to encompass the objective sought by the union in *Green*) would create some difficult problems. It is *highly* unlikely that the Committee intended to include within the offense of blackmail a union's peaceful picketing to cause an employer to add jobs which he considers unnecessary or superfluous. However, the ambiguities inherent in the central concept of the two sections—namely, the fuzzy notion of "legitimate" versus "illegitimate" ends—makes the statute, in theory at least, susceptible to that construction.

To summarize: If, under the extortion section, the union's objective is other than a "legitimate" one, whatever that means, it is

263. *Id.* at 648 n.58.
264. S. 1722, 96th Cong., 2d Sess. (1980) (as reported with amendments).
265. S. REP. No. 553, 96th Cong., 2d Sess. 657 (1980) (footnote omitted).

not covered by the bar under subsection (b) and a prosecution can commence under the main provisions of the section.[266] On the other hand, even if the union is attempting to achieve "legitimate collective bargaining objectives,"[267] the use of force to that end can still be considered extortion if the requirements spelled out in the "unless" clause of subsection (b) are all met. With respect to these, the Committee Report, which presumably represents an authoritative interpretation of the language, deserves to be quoted in full, because it adds things which are certainly not apparent on the face of the language itself:

> The exception to the bar stated in subsection (b) is intended to spell out the exclusive circumstances which may give rise to a Federal extortion prosecution involving unlawful conduct that occurs during a labor dispute to achieve legitimate collective bargaining objectives. In essence this exception adds two elements to the crime. First, the government must prove that the defendant engaged in conduct against the person which, if there were Federal jurisdiction, would be a felony under the code. This element requires an act and not a mere statement or threat to act. Second, the government must prove that the defendant acted not merely "knowingly" as that term is used in the code but with the preestablished intent to (a) cause death or severe bodily injury, and (b) by so doing to force acceptance of the union's demands. "Severe bodily injury" means protracted disabling or disfiguring bodily injury that precludes the individual from gainfully working.
>
> The phrase "clear proof," which has its origin in Section 6 of the Norris-LaGuardia Act (29 U.S.C. Section 106), as used here imposes on the government the obligation to establish by direct evidence that the conduct against the person included in the exception was undertaken for the purpose specified therein. Without such proof, violence, no matter how serious, during a labor dispute is outside the Federal extortion law.
>
> In order to reinforce traditional principles of federalism the bar is not overcome (and the Federal government may not initiate an investigation or prosecution of the illegal conduct) unless the Attorney General, Deputy Attorney General, or Assistant Attorney General for the Criminal Division certifies in writing that (a) the facts establish the existence of the additional elements of the offense required by the exception to the bar; (b) a Federal prosecution should be commenced under this section; and (c) for reasons other than insufficient evidence the State refuses to proceed with a prosecution relating to the conduct against the person specified in the exception to the bar. Such a certification must be based on evidence obtained by or available to the State prior to the Federal government's involvement in the matter; however, once the certification is made, this provision does not limit the Federal government's ability to secure and rely on additional evidence.[268]

Construed in this fashion, it would appear that section 1722 would result in federal prosecution of violence in connection with collective bargaining only in the rarest of situations. The "clear proof" standard has, for example, been a difficult one to meet in

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266. *See* text accompanying note 257 *supra*.
267. S. 1722, 96th Cong., 2d Sess. (1980).
268. S. REP. No. 553, 96th Cong., 2d Sess. 651-52 (1980).

Norris-LaGuardia cases, and one could expect it to be a popular and successful ground of defense under the proposed extortion section as well. Similarly, the limits on federal *initiation* of investigations and prosecutions under the extortion section, as suggested by the Committee Report, would severely hamstring the enforcement of the statute. The exclusion of threats to cause property damage and the definition of "severe bodily injury" in terms of "protracted disabling or disfiguring bodily injury that precludes the individual from gainfully working"[269] further limits the circumstances under which the section could be applied to labor violence. Moreover, insufficiency of the evidence as a basis for non-prosecution by the state is not, according to the Committee Report, sufficient to permit federal involvement, an ironic limitation since the state's lack of sufficient evidence may well be attributable to its inability to effectively investigate a crime having interstate dimensions. Finally, the requirement of what amounts to an *affirmative* recommendation from someone at the *highest* levels of the Justice Department that a prosecution be commenced seems to create almost a presumption against prosecution, immediately makes the decision a politically sensitive one, and also suggests that the discretion involved there is somewhat broader than that which would exist otherwise. Nevertheless, the Criminal Code Reform Act of 1979, S. 1722, containing the extortion provision thus described, was reported out favorably by the Senate Judiciary Committee, and is currently pending before the full Senate.

Although most of the attention was initially focused on the Senate committee hearings, the House of Representatives was at this time also quietly proceeding on the matter of revising and recodifying the federal criminal laws. The Brown Commission draft itself was, for example, introduced in the House as H.R. 300,[270] but no hearings were ever held on it. As the reforms began to solidify in S. 1 and S. 1400, "liberal" representatives, alarmed at the direction the legislation was taking, introduced their own proposed code of federal criminal laws, H.R. 10850[271] in 1975 and H.R. 12504[272] in 1976. One commentator has called these "belated and hastily drafted alternatives"[273] to S. 1, and they do not really warrant any detailed analysis.

The first proposal to receive serious consideration by the House was H.R. 6869.[274] This was the so-called "companion bill" to S. 1437

269. *Id.* at 651.
270. H.R. 300, 92d Cong., 2d Sess. (1972).
271. H.R. 10850, 94th Cong., 1st Sess. (1975).
272. H.R. 12504, 94th Cong., 2d Sess. (1976).
273. Schwartz, *Reform of the Federal Criminal Laws: Issues, Tactics, and Prospects*, 41 LAW & CONTEMP. PROB. 12 (1977).
274. H.R. 6869, 95th Cong., 2d Sess. (1978).

which omitted the term "wrongful" (thus overruling *Enmons*) and provided an affirmative defense if the threatened injury was "minor and incidental to peaceful picketing."[275] Organized labor was not, however, happy with the wording of this defense. Lance Compa, Washington Representative of the United Electrical, Radio and Machine Workers of America, stated that:

> H.R. 6869 provides a defense, not a bar to prosecution, that the threatened or feared injury or damage was "minor" and "incidental" to a "bona fide labor dispute." Each of these terms is dangerously unclear. How much damage is minor? What is incidental? Who determines whether there is a bona fide labor dispute? Suppose, for example, what an employer labels a "wildcat" strike is later found by the NLRB to be protected Unfair Labor Practice strike? Where would this leave a prosecution based on the "bona fide" requirement?[276]

The bill was never reported out of committee. That year, however, the Subcommittee on Criminal Justice did report H.R. 13959[277] to the House Committee on the Judiciary. This bill was designed merely to reorganize the federal criminal laws, but not, at that point in time, to change their substance. Thus, it carried forward the law as construed by the Court in *Enmons*.

The next proposed revision to the federal criminal laws appeared in the form of H.R. 6233.[278] As introduced, section 2522 of this bill provided, with respect to the extortion offense that:

> (a) Whoever knowingly threatens or places another person in fear that—
>
> (1) any person will be subjected to bodily injury or kidnapping; or
>
> (2) that any property will be damaged; and thereby obtains property of another, or attempts to do so, commits a class C felony.
>
> (b) It is not a defense to a prosecution for an offense under this section that the conduct constituting the offense was in furtherance of a legitimate objective or activity.[279]

Subsection (b) obviously makes express what the omission of the term "wrongfully" in subsection (a) leaves only implicit—namely, that the *Enmons* approach was to be repudiated in its entirety.

However, when H.R. 6233 was later reintroduced as H.R. 6915,[280] the extortion provision had been changed by the insertion of the term "wrongfully" before the term "obtains" in subsection (a), thus making subsection (a) directly contradictory to the language in subsection (b). Apparently, the legal and logical effect of that was to reaffirm the "legitimate objectives" defense of *Enmons*.[281]

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275. *Id.*
276. *Hearings, Part XIV*, *supra* note 249, at 10763.
277. H.R. 13959, 95th Cong., 2d Sess. (1978).
278. H.R. 6233, 96th Cong., 1st Sess. (1979). A "working draft" of this bill was also introduced in the Senate as S. 1723, 96th Cong., 1st Sess. (1979), but with subsection (b) omitted.
279. *Id.*
280. H.R. 6915, 96th Cong., 2d Sess. (1980).
281. One logical, but somewhat unlikely explanation, of this draft was that it made

The resolution to that conundrum ultimately adopted by the House Judiciary Committee was simply to delete subparagraph (b), thus apparently leaving the law exactly as it is under *Enmons*.

In this form, H.R. 6915 has been reported out of committee and is currently pending before the House of Representatives. Whether this bill, the Senate version, some compromise worked out by a Senate-House Conference Committee, or no bill at all is to be passed is, of course, purely a matter of conjecture.

V. CONCLUSION

The response of the federal extortion laws to the problem of labor union violence does not reflect favorably on the state of American jurisprudence in three broad respects. First, as a matter of judicial process, serious questions can be raised about the way the courts have handled the extortion statutes. The *Local 807* case was poorly reasoned, and both the majority opinion and the dissent leave the scope of the statute somewhat obscure. The "legitimate objectives" rationale of the *Enmons* decision is not only inconsistent with the prior *Green* decision, thus creating a yet unresolved ambiguity in the statute, but also ignores the overwhelming evidence of a contrary legislative intent. The reasoning in the opinion is weak in other respects as well, and one must share Mr. Justice Douglas's suspicion that the Court's own predelictions about labor policy played a more instrumental role in the decision than the traditional tenets of statutory construction, thus creating, as he also recognized, serious separation-of-powers problems.[282] Specifically, it would appear that the Court used the *judicial process* to achieve a *political result* that probably could not have been achieved by the *legislative process* and which, as indicated by the current status of pending legislation, probably cannot now be reversed by the *legislative process*.[283]

In addition, as a matter of legislative process, the manner in which Congress has responded to the problem leaves much to be

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"legitimate objectives" a defense in all cases *except* those involving labor extortion, thus turning on its head the uniquely favored treatment afforded labor unions by the *Enmons* decision.

282. Mr. Justice Douglas noted that "[w]hile we said in . . . [case citation omitted] that it is 'retrospective expansion of meaning which properly deserves the stigma of judicial legislation,' the same is true of retrospective contraction of meaning." 410 U.S. at 419 (Douglas, J., dissenting).

283. The *Enmons* decision is, of course, only one example of this rather curious phenomenon. For an insightful analysis of the underlying constitutional (separation of powers) problems posed by this particular use, or abuse, of the judicial process, see Walker, *The Exorbitant Cost of Redistributing Injustice: A Critical View of* United Steelworkers of America v. Weber *and the Misguided Policy of Numerical Employment*, 21 B.C. L. Rev. 1 (1980).

desired. Although a relatively clear legislative intent can, on some critical points at least, be distilled from the Hobbs Act debates, they do make for agonizing reading for they are often rambling, obscure, filled with many irrelevancies, and in general reflect the lack of a clear understanding of finer nuances of the matter under discussion. Furthermore, the statutory draftsmanship is frequently flawed. The use of the word "wrongful" in the Hobbs Act without a clear indication of what was intended and the ambiguous words and phrases of much of the pending legislation serve only as an invitation to judicial license.

Finally, at a substantive level, the *Enmons* creation of a doctrinal exception applicable *only* to the agents of organized labor, and the currently pending legislation, which, in whole or in part, perpetuates that policy of favored treatment, raise serious and far reaching questions about the quality and the equality of federal criminal justice in this country. Congressman Hobbs said of the Hobbs Act that "[t]his bill is grounded on the bedrock principle that crime is crime, no matter who commits it; and that robbery is robbery and extortion extortion, whether or not the perpetrator has a union card."[284] The view today, however, is that this is not necessarily so. Instead, the prevailing view seems to be that criminality under federal law is as much a matter of the actor's *status* as it is of his *conduct*, and that the status of a labor union official is an especially privileged one in our society.

Admittedly, state law remedies may still be available for labor violence falling within the *Enmons* exception. Furthermore, even an intelligently drafted and impartially construed federal extortion statute may not be the cure-all for labor violence, since much of it does not have extortionate objectives, proof problems will always be somewhat more difficult with respect to this particular form of violent crime, and limited federal resouces may sometimes call for selective enforcement, thus still leaving the bulk of the responsibility for combating this evil to other sources of law. However, given the *almost* universal agreement that labor violence, even when aimed at otherwise legitimate ends, is to be deplored, there are no sound reasons why such violence should not be covered by a federal extortion statute of general application. The deterrent effect alone would be of immense value in promoting a central policy of federal labor law—namely, the encouragement of collective bargaining, reasoned persuasion, and the *peaceful* use of economic power. To that end the *Enmons* decision should be overruled, either by the Court itself after a more reflective review of the legislative history, or by Congress.

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284. 89 CONG. REC. 3217 (1943).

0091-4169/81/7202-0499
THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY Vol. 72, No. 2
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Printed in U.S.A.

EFFORTS TO APPLY THE FEDERAL CRIME OF EXTORTION TO LABOR-RELATED VIOLENCE

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INTRODUCTION

One of the more controversial provisions in the revised criminal code proposed in the Ninety-Sixth Congress was the definition of the crime of extortion. Specifically, a difference of opinion arose over whether the federal crime of extortion should include acts occurring during a legitimate labor dispute which are designed to obtain legitimate employment benefits. Present law exempts such acts from prosecution as extortion.

The criminal code revision bills reported to the House of Representatives and the Senate for consideration during the second session of the Ninety-Sixth Congress contained different definitions of the crime of extortion. Senate bill 1722 (S. 1722) included a definition of extortion which would have, in some cases, overruled the Supreme Court's decision in *United States v. Enmons*,[1] that efforts by labor unions to obtain improved terms and conditions of employment cannot constitute extortion as defined in the Hobbs Act,[2] even when accompanied by violence, property damage, or similar coercive conduct. House bill 6915 (H.R. 6915), on the other hand, would have preserved the *Enmons* decision.

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1 410 U.S. 396 (1973).

2 18 U.S.C. § 1951 (1976). In pertinent part the Hobbs Act provides:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
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> (b) As used in this Section—
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> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

The Ninety-Sixth Congress adjourned without acting on either the House or Senate bills.

Its opponents in Congress have attempted since 1973 to overrule *Enmons* in every session of Congress which has considered revision of the Federal Criminal Code. The wisdom of the two versions of the crime of extortion as defined in the most recent House and Senate criminal code revision bills can best be considered after the disparate definitions are examined. This examination justifies adoption of a definition of extortion which preserves the *Enmons* interpretation whenever the Congress again considers this issue.

THE HOBBS ACT

In 1934, Congress enacted a statute, commonly known as the Anti-Racketeering Act,[3] which was designed to penalize extortion in connection with trade or commerce. The 1934 Act was modified in 1946 by the Hobbs Act in order to eliminate an exception which permitted the payment of wages by a bona fide employer to a bona fide employee.[4] Subsequently, in 1948, the original Hobbs Act was reenacted without substantial change as 18 U.S.C. § 1951.[5]

The Hobbs Act was Congress' response to the Supreme Court's decision in *United States v. Local 807 International Brotherhood of Teamsters*,[6] which ruled that section 2 of the Anti-Racketeering Act of 1934 did not forbid the exaction of money in the form of a wage demand by threats of violence from an employer for payment to a putative employee who performed no services for the money, but made a good faith tender of the services which he was willing to perform but which the employer rejected.

The Anti-Racketeering Act of 1934 proscribed, in connection with

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[3] 48 Stat. 979. Section 2 of the Act provided:

Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona-fide employer to a bona-fide employee; or

(b) Obtains the property of another, with his consent induced by wrongful use of force or fear, or under color of official right; or

(c) Commits or threatens to commit an act of physicial violence or physical injury to any person or property in furtherance of a plan or purpose to violate sections (a) or (b); or

(d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts; shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by a fine of $10,000, or both.

[4] 60 Stat. 420, ch. 537.

[5] 62 Stat. 793, ch. 645; *see* note 2 *supra*.

[6] 315 U.S. 521 (1942).

interstate commerce, the exaction of valuable consideration by force, violence or coercion, "not including, however, the payment of wages by a bona fide employer to a bona fide employee."[7] In *Local 807*, the Supreme Court held that this exception covered New York City Teamsters who by violence or threats exacted payments from out-of-town truckers in return for the unwanted and superfluous service of driving out-of-town trucks to and from the city. Teamsters would lie in wait for the out-of-town trucks and then demand payment from the owners and drivers in return for allowing the trucks to proceed into the city. The Teamsters sometimes drove the arriving trucks into the city, but in other instances the out-of-town truckers paid the fees but rejected the Teamsters' services and drove the trucks themselves. There was evidence in several cases that the Teamsters, having exacted their fees, disappeared without offering to perform any services at all. The Court held that the activities of the Teamsters were included within the wage exemption to the Anti-Racketeering Act, even though the work they performed was unneeded, unwanted, and in some cases rejected.

The Court decided *Local 807* in March, 1942. Hearings on three bills addressed in part to the *Local 807* decision were held by a subcommittee of the House Judiciary Committee in April and May, 1942.[8] At the conclusion of the hearings, Representative Hobbs defended his bill, H.R. 6872, but stated that he proposed to substitute a new bill,[9] expressing the theme of the history of the enactment of the Hobbs Act.

> [T]he elements of the crime denounced by this bill are essentially the same as the elements of robbery or extortion. The only added element is interference with interstate commerce. . . . [T]he revised bill should include conspiracy and attempts to commit such a crime, but the essence would be interference with interstate commerce by robbery or extortion.
>
> This bill is grounded upon the bedrock principle that crime is crime, no matter who commits it, and that robbery is robbery and extortion, extortion, whether the perpetrator has a union card in his pocket or not.[10]

Representative Hobbs reiterated this argument in debate on the House floor in 1943 and 1945, stressing that the reach of the bill was limited to robbery and extortion in the conventional senses.[11]

H.R. 32, which became the Hobbs Act, eliminated the wage exception that had been the basis for the *Local 807* decision.[12] But, as fre-

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7 48 Stat. 979; *see* note 3 *supra*.

8 *Hearings Before Subcomm. No. 3 of the Committee on the Judiciary on H.R. 5218, H.R. 6752, and H.R. 6872*, 77th Cong., 2nd Sess. (1942) [hereinafter cited as *Hearings on H.R. 5218, 6752 & 6872*].

9 Representative Hobbs did introduce a new bill, H.R. 7067, 77th Cong., 2d Sess. (1942), *reported in* H. REP. NO. 2176, 77th Cong., 2d Sess. (1942).

10 *Hearings on H.R. 5218, 6752 & 6872*, *supra* note 8, at 426-28.

11 89 CONG. REC. 3217 (1943); 91 CONG. REC. 11900, 11912 (1945).

12 The Hobbs Act also eliminated the proviso in section six of the Anti-Racketeering Act

quently emphasized during the House debates, the limited effect of the bill was to shut off the possibility opened up by the *Local 807* case that union members could use their protected status to exact payments from employers for imposed, unwanted, and superfluous services.[13]

By eliminating the wage exception to the Anti-Racketeering Act, the Hobbs Act did not, however, reach violence during a strike to achieve *legitimate* collective-bargaining objectives. The debates repeatedly emphasized that the bill did not "interfere in any way with any legitimate labor objective or activity,"[14] and that "there is not a thing in it to interfere in the slightest degree with any legitimate activity on the part of labor people or labor unions. . . ."[15] Congressman Jennings, responding to a question concerning the Act's coverage, said the Act "does not have a thing in the world to do with strikes."[16]

Thus, the coerced payment for a rejected stand-by job, where no employment relationship existed and no services were rendered, was the target of the Hobbs Act.[17] Representative Hobbs directed his remarks to this mischief when he stated that, "the sole and simple purpose, the

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of 1934: That no court of the United States shall construe or apply any of the provisions of this Act in such manner as to impair, diminish, or in any manner affect the rights of bona-fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States. § 6, 48 Stat. 979. That provisio was one of the supports for the *Local 807* decision. *See* 315 U.S. at 535. It was eliminated to prevent reliance on that clause as a means of resuscitating the *Local 807* decision. *See* 91 CONG. REC. 11912 (remarks of Rep. Hobbs) (1945).

[13] This bill is designed simply to prevent both union members and nonunion people from making use of robbery and extortion under the guise of obtaining wages in the obstruction of interstate commerce. That is all it does . . . [T]his bill is made necessary by the amazing decision of the Supreme Court in the case of the United States against Teamsters' Union 807, 3 years ago. That decision practically nullified the anti-racketeering bill of 1934. . . . In effect the Supreme Court held that . . . members of the Teamsters' Union . . . were exempt from the provisions of that law when attempting by the use of force or the threat of violence to obtain wages for a job whether they rendered any service or not.

91 CONG. REC. 11900 (1945).

[14] *Id.* at 11841 (remarks by Rep. Walter).

[15] *Id.* at 11908 (remarks of Rep. Sumners). *See also id.* at 11900 (remarks of Rep. Hancock); *id.* at 11904 (remarks of Rep. Gwynne); *id.* at 11909 (remarks of Rep. Vursell).

[16] *Id.* at 11912 (remarks of Congressman Jennings).

[17] Congressman Hobbs forcefully rejected the idea that strike misconduct, as such, is extortionate:

Mr. Marcantonio. All Right. In connection with a strike, if an incident occurs which involves—

Mr. Hobbs. The Gentleman need go no further. This bill does not cover strikes or any question relating to strikes. . . .

Mr. Marcantonio. That does not answer my point. My point is that an incident such as a simple assault which takes place in a strike could happen. Am I correct?

Mr. Hobbs. Certainly.

Mr. Marcantonio. That then could be extortion under the gentleman's bill, and that striker as well as his union officials could be charged with violation of sections of this bill.

Mr. Hobbs. I disagree with that and deny it *in toto*.

89 CONG. REC. 3213 (1943).

single purpose, of this bill is to do the best we can to protect interstate commerce and free the highways and streets of this country of robbers."[18] The rhetoric of various Congressmen was understandably imprecise, but their concern was the exertion of actual or threatened violence to compel an employer to pay for nothing or nearly nothing.

ENFORCEMENT OF THE HOBBS ACT

Proponents of the Hobbs Act defended it as not encroaching on the legitimate activities of labor unions, on the grounds that the new statute incorporated New York's definition of extortion—"the obtaining of property from another . . . with his consent, induced by a wrongful use of force or fear, or under color of official right."[19] Felonious intent to misappropriate another's property is an essential element of extortion under New York's law.[20] The court in *People v. Cuddihy*[21] stated that "[t]he intent to extort for gain must be wrongful and unlawful 'to obtain that which in justice and equity the party is not entitled to receive.' The ultimate object and intent of the party here accused was not '*lucri causa*' which must always characterize the act." In *People v. Sheridan*,[22] the court stated that "[t]he unlawfulness lies in the motive. If its purpose be unlawful, then the act (which under other conditions might be justified) becomes unlawful."

This section of the New York Penal Code was interpreted in *People v. Dioguardi*.[23] The Court of Appeals of New York construed the term "force," used to define extortion in the New York statute, as including coercion, physicial violence, destruction of property, and economic loss other than that induced by a lawful strike. In *Dioguardi*, the defendant received payments from an employer which were, in effect, to buy an end to peaceful organizational picketing. The court stated that the otherwise lawful picketing became criminal when its purpose was to exact payment other than wages from the employer.[24]

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[18] 91 CONG. REC. 11912 (1945).

[19] NEW YORK PENAL LAW § 850 (McKinney 1909). *See* 91 CONG. REC. 11842 (remarks of Rep. Walter); *id.* at 11843 (remarks of Rep. Michener); *id.* at 11900 (remarks of Reps. Hancock and Hobbs); *id.* at 11906 (remarks of Rep. Robsion). *See also* United States v. Caldes, 457 F.2d 74, 77 (9th Cir. 1972); United States v. Provenzano, 334 F.2d 678, 686 (3d Cir. 1964), *cert. denied*, 379 U.S. 947 (1964).

[20] Note, *Labor Faces The Amended Anti-Racketeering Act*, 101 PA. L. REV. 1030, 1037-39 (1953).

[21] People v. Cuddihy, 151 Misc. 318, 324, 271 N.Y.S. 450, 456 (Ct. Gen. Sess. 1934), *aff'd*, 243 A.D. 694, 277 N.Y.S. 960 (1935).

[22] People v. Sheridan, 186 A.D. 211, 213, 174 N.Y.S. 327, 329 (1919). *See also* People v. Weinseimer, 117 A.D. 603, 616, 102 N.Y.S. 579, 588 (1907).

[23] 8 N.Y.2d 260, 168 N.E.2d 683, 203 N.Y.S.2d 870 (1960).

[24] *Id.* at 271, 168 N.E.2d at 690-91; 203 N.Y.S.2d at 880.

The picketing here . . . may have been perfectly lawful in its inception (assuming it was

Accordingly, under New York law, when the object of the lawful activity is the personal enrichment of the actor rather than the economic betterment of the worker, it is extortion. On the other hand, where the end is attainment of a *legitimate* labor objective, there is no extortion because there is no intent to misappropriate property.[25] Thus, "the collection or attempted collection of union dues," where there "is no claim that the dues were used for personal gain as distinguished from union activities . . . cannot be blackmail or extortion. The felonious intent necessary to sustain a conviction for these crimes is wholly lacking."[26] Extortion does not exist where the proof is insufficient to establish beyond a reasonable doubt that the accused "was actuated by the purpose of obtaining a financial benefit for himself or his codefendants and was not attempting in good faith to advance the cause of unionism. . . ."[27]

This principle was followed by a federal court applying the Hobbs Act in *United States v. Kramer*,[28] where a union leader threatened an employer with labor trouble if he was not paid a sum of money. Similarly, in *United States v. Hyde*,[29] the Attorney General of Alabama and his aide were convicted of a Hobbs Act violation for threatening life insurance and loan companies with state action, which could lead to the closing of their businesses, unless payments were made to them. The court there held that the "wrongful use of an official right may be a basis for extortion."[30]

The federal courts have limited the Hobbs Act to the use of force, violence, or threat of violence to obtain wages or money in the context of a labor dispute. In *United States v. Kemble*,[31] Truck Drivers and Helpers Union Local 676 and one of its business representatives were indicted for violence against a nonunion truck driver who attempted to unload merchandise from his truck. The union business representative forcibly insisted that the truck driver employ a helper referred by Local 676 to

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part of a bona fide organizational effort) and may have remained so—despite its potentially ruinous effect on the employers' businesses—so long as it was employed to accomplish the legitimate labor objectives of organization. Its entire character changed from legality to criminality, however, when it was used as a pressure device to exact the payment of money as a condition of its cessation.

Id.

25 People v. Dioguardi, 8 N.Y.2d 260, 168 N.E.2d 683, 203 N.Y.S.2d 870 (1960), *discussed in* United States v. Caldes, 457 F.2d 74, 77-78 (9th Cir. 1972); People v. Barondess, 133 N.Y. 649, 31 N.E. 240, 16 N.Y.S. 436 (1892); People v. Weinseimer, 117 A.D. 603, 102 N.Y.S. 579 (1907).

26 People v. Gassman, 182 Misc. 878, 885-86, 45 N.Y.S.2d 709, 715 (Ct. Gen. Sess. 1943), *aff'd*, 268 A.D. 377, 51 N.Y.S.2d 173 (1944), *aff'd*, 295 N.Y. 254, 66 N.E.2d 705 (1946).

27 People v. Adelstein, 9 A.D.2d 907, 908, 195 N.Y.S.2d 27, 28 (1959).

28 355 F.2d 891 (7th Cir.), *remanded for sentencing per curiam*, 384 U.S. 100 (1966).

29 448 F.2d 815 (5th Cir. 1971), *cert. denied*, 404 U.S. 1058, (1972).

30 *Id.* at 833.

31 198 F.2d 889 (3d Cir. 1952), *cert. denied*, 344 U.S. 893 (1952).

unload the trucks because the truck driver was not a union member. The court concluded, after analyzing *Local 807* and the legislative history of the Hobbs Act, that Congress intended the Act to include the forced payment of wages in proper cases. Nevertheless, the court hastened to add that proper cases include only those involving forced payment of money for imposed, unwanted, and superfluous services, such as those in the *Kemble* case.

Later, the Supreme Court adopted the same approach in *United States v. Green*.[32] In *Green*, each of the two counts of an indictment for extortion under the Hobbs Act alleged that the extortionate acts consisted of attempts to obtain from an employer "his money, in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers commonly known as swampers, . . . induced and obtained by the wrongful use, to wit, the use for the purposes aforesaid, of actual and threatened force, violence and fear made to said [employer]. . . ."[33] The Court held that the acts charged were prohibited by the Hobbs Act.[34] Before and after *Green*, a series of cases held that extortion occurs whenever a union member tries to foist himself or another union member on an employer by threats of force or violence in an effort to obtain a payoff for himself.[35] None of these cases, however, involved efforts to achieve legitimate collective bargaining objectives.

Prior to 1969, there was only one prosecution under the Hobbs Act for misconduct which occurred during a legitimate collective bargaining dispute, the Hobbs Act previously having been used only against unscrupulous officials attempting to secure payoffs. On December 9, 1969, the District Court of Arizona returned a two-count indictment against Theodore Caldes and Wellaine M. Lowry for violation of the Hobbs Act. Caldes and Lowry, both labor leaders, were accused of damaging property of the Mission Linen Supply Company by throwing green dye on the company's laundry. The damage, although minor in each instance, occurred in the midst of two years of negotiations for a collective bargaining agreement with the company.[36]

The Ninth Circuit ordered the indictments dismissed in *United States v. Caldes*[37] because it determined that the Hobbs Act was not intended

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[32] 350 U.S. 415 (1956).

[33] *Id.* at 417.

[34] *Id.* at 419.

[35] *See, e.g.*, Stirone v. United States, 361 U.S. 212 (1960); United States v. Kramer, 355 F.2d 891 (7th Cir. 1966); United States v. Varlack, 225 F.2d 665 (2nd Cir. 1966); Callanan v. United States, 223 F.2d 171 (8th Cir.), *cert. denied*, 350 U.S. 862 (1955).

[36] Brief for the AFL-CIO as Amicus Curiae at 2 n.3, United States v. Enmons, 410 U.S. 396.

[37] 457 F.2d 74 (9th Cir. 1972).

to reach low-level violence in connection with bona fide labor disputes.[38] Three other indictments returned under the Hobbs Act in 1970 were based on the same concept of the statute reflected in the *Caldes* indictments. Two of the indictments returned in the District Court for the Southern District of Florida were dismissed without opinion in June, 1979.[39] The third indictment was returned on October 15, 1970, in the Eastern District of Louisiana against Travis Paul Enmons and three other union leaders.

THE *ENMONS* CASE

Each of the individuals indicted in *United States v. Enmons*[40] was an official of one of two local unions affiliated with the International Brotherhood of Electrical Workers, one representing employees of the Gulf States Utilities Company, and the other representing employees of independent contractors engaged by the utility company to perform construction and maintenance work. The defendants were accused of five separate acts of violence in furtherance of a conspiracy to obstruct commerce, and to force the company to agree to a collective bargaining

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[38] The *Caldes* Court stated as follows:

> Labor unions must be able to actively and vigorously pursue the interest of their members at all times, provided their activity is directed toward legitimate ends. The expansive interpretation of "extortion" used in the Hobbs Act as urged by the Government would make criminal the activities of many militant labor organizations. Under the Government's view, a labor union and its members would be guilty of extortion under Section 1951 if they strike for higher wages in violation of their collective bargaining agreement, because an "illegal" or "wrongful" strike to obtain higher wages constitutes a "wrongful" use of force to obtain the property of another. Spontaneous and sporadic fighting on the picket lines could also be condemned as the use of wrongful force and as extortion if this view was allowed to prevail. This type of action, including the use of violence during a strike, was the subject of congressional attention the year following enactment of the Hobbs Act. The Taft-Hartley Act contained specific provisions which condemned this action as unfair labor practices. . . . It is significant that during congressional deliberations of the bill no congressman expressed an opinion that the Hobbs Act of the preceding year covered union violence while a strike was in progress.
>
> If the Hobbs Act was construed to cover acts of violence during the negotiations for a legitimate labor goal we see a further danger that it would permit a union member to be found guilty of extortion for mischievous misconduct even though he did not possess the requisite felonious intent to deprive another of his property. It does not appear that Congress intended that acts of violence which are the by-product of frustration engendered by a prolonged, bona-fide collective bargaining negotiation to be "extortion" within the meaning of the Act. Indeed, in *Local 807* the Government admitted in its brief that "Those who use coercion to secure genuine employment are engaged in [a] legitimate labor objective; their activities, although perhaps constituting breaches of the peace do not partake of the nature of extortion."
>
> Finally, it appears to us that acts of vandalism of the type committed by these appellants would be more properly and suitably prosecuted in the state courts and it is doubtful if Congress intended by Section 1951 to elevate this type of conduct to the level of the federal court.

Id. at 78-79 (citations omitted).

[39] United States v. Rutcofsky, No. 70-101-CR-JE (S.D. Fla. June 24, 1970); United States v. Schiffman, No. 70-102-CR-JE (S.D. Fla. June 24, 1970).

[40] *See* United States v. Enmons, 410 U.S. 396.

agreement with one of the local unions which included higher wages and other monetary benefits. The acts of violence included firing high-powered rifles at three company transformers, draining the oil from a company transformer, and blowing up a transformer substation owned by the company.

The government contended that the Hobbs Act covers all attempts by union members and officials, through force or violence, to obtain the property of an employer engaged in interstate commerce. The government also argued that the language of the Hobbs Act nowhere suggests a special immunity for union members and officials who use force and violence to obtain higher wages and better working conditions, simply because these could also be obtained through lawful collective bargaining.

The Supreme Court, in a five-to-four decision with Justice Blackmun concurring, held that the language of the Hobbs Act proscribes interference with interstate commerce by extortion, and that the use of violence to obtain higher wages is not within the statute's definition of extortion.[41] The Court observed that "extortion" is defined in the Hobbs Act as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear,"[42] reasoning that the term "wrongful" modifies the entire definition of extortion and not just the proscribed means. The Court's rationale was that it is always wrongful to use force, violence, or fear and, therefore, the use of that term was intended to modify the other phrase in the definition which refers to "obtaining the property of another."[43]

Consequently, the Court refused to accept the government's broad concept of extortion—the wrongful use of force to obtain even legitimate union demands of higher wages.[44] The Court expressed skepticism about limiting the government's concept of extortion, even though the government conceded a possible exception for "the incidental injury to a person or property that not infrequently occurs as a consequence of the charged atmosphere attending a prolonged labor dispute."[45] Justice Blackmun's concurring opinion accepted the majority's rationale, but

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[41] *Id.* at 400.

[42] *Id.* at 399.

[43] *Id.* at 400.

[44] Justice Stewart observed:

> The Government's broad concept of extortion—the "wrongful" use of force to obtain even the legitimate union demands of higher wages—is not easily restricted. It would cover all overtly coercive conduct in the course of an economic strike, obstructing, delaying, or affecting commerce. The worker who threw a punch on a picket line, or the striker who deflated the tires on his employer's truck would be subject to a Hobbs Act prosecution and the possibility of 20 years' imprisonment and a $10,000 fine.

Id. at 410 (footnote omitted).

[45] *Id.* at 410.

invited Congress to consider whether extreme acts of violence of the kind charged in the *Enmons* case should become federal crimes.[46]

POST-*ENMONS* DECISIONS

Subsequent judicial decisions have consistently recognized that "the effect of *Enmons* was to remove from the reach of federal criminal law the use of coercive tactics to obtain increased wages, but with the *caveat* that the prosecutor's hand would be stayed *only* when the payment is gained in furtherance of legitimate labor objectives."[47] Thus, the *Enmons* decision has not exempted labor officials and union members from all federal prosecution under the Hobbs Act merely by virtue of the juxtaposition of their alleged unlawful activity with a labor dispute.

In *United States v. Daley*,[48] the principal officer of a Teamsters union was convicted of a Hobbs Act violation because he requested and received at no cost six hundred tons of stone for his personal use from an employer then in collective bargaining with the defendant's union. The defendant also arranged to have two members of the local union provide their trucks to load and haul the stone after regular working hours. Neither of the drivers was compensated by defendant for this work. Similarly, in *United States v. Quinn*,[49] a clergyman who was authorized to represent certain employees of a retail store in a labor dispute was convicted of violating the Hobbs Act for receiving payment from the employer in return for removing a picket line around the employer's store.[50] Each of these defendants was convicted of violating the Hobbs Act because he obtained a personal payoff through the use of coercive tactics.[51] Nonetheless, critics of the *Enmons* case are still dissatisfied. Some have argued, for instance, that the Court's subsequent decision in *United States v. Culbert*,[52] drastically narrowed the holding in *Enmons*. There is no basis for this interpretation of *Culbert*.[53]

Moreover, the federal government recently attempted to circumvent *Enmons* by prosecuting union officials for the destruction of two

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46 *Id.* at 412.

47 United States v. Quinn, 514 F.2d 1250, 1257 (5th Cir. 1975), *cert. denied*, 424 U.S. 955 (1976).

48 564 F.2d 645 (2d Cir. 1977), *cert. denied*, 435 U.S. 933 (1978).

49 514 F.2d 1250.

50 *See also* United States v. Nell, 570 F.2d 1251 (5th Cir. 1978).

51 There has also been at least one successful prosecution of a labor official for attempting to impose unwanted or unneeded union services. United States v. McCullough, 427 F. Supp. 246 (E.D. Pa. 1977).

52 435 U.S. 371 (1978).

53 United States v. Culbert simply held that the Hobbs Act is not limited to corrupt labor activities as held earlier in United States v. Beck, 511 F.2d 997 (6th Cir. 1975), *cert. denied*, 423 U.S. 836 (1975); and United States v. Franks, 511 F.2d 25, 31 n.7 (6th Cir. 1975), *cert. denied*, 422 U.S. 1042 (1975).

trucks which belonged to an employer with which the defendants' unions were involved in a labor dispute. The government charged the defendants with violations of the Travel Act[54] instead of the Hobbs Act. In *United States v. Thordarson*,[55] the government argued that, because the Travel Act does not contain the "wrongful taking" requirement in the Hobbs Act, *Enmons* is inapplicable to a Travel Act prosecution of allegedly extortionate activities of labor leaders and members. The court disagreed, applying *Enmons* to the Travel Act by strictly construing the language and legislative history of the latter; the court further observed that the states, not the federal government, should regulate criminal activity during strikes.[56]

These cases and others have narrowly construed the Hobbs Act within the context of legitimate labor activity.[57] There has been no expansion of *Enmons* and the holding in *United States v. Quinn* represents a slight narrowing of *Enmons*. Critics of *Enmons*, despite the courts' consistently narrow interpretation, continue to press for its legislative reversal.

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[54] The Travel Act provides in pertinent part that:

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to . . .

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined . . . imprisoned . . . or both.

(b) As used in this section "unlawful activity" means . . . (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

18 U.S.C. § 1952 (1976).

[55] 487 F. Supp. 991 (C.D. Cal. 1980), *appeal docketed*, No. 80-1239 (9th Cir. 1980).

[56] *Id.* at 994-95.

The *Enmons* rationale is as appropriate to a § 1952 prosecution as it is to a § 1951 prosecution. Defendants, in the case at bar, are labor officials whose unions participated in a lawful strike. Their alleged acts are ones contemplated as part of a series of coercive tactics to achieve the recognition of a union contract. Although, as in *Enmons*, the statutory proscriptions against apply, there is no indication that Congress intended to extend the scope of a statute aimed at combatting organized criminal activity to encompass violence arising out of a lawful strike. Criminal statutes must be strictly construed, and any ambiguity resolved in favor of lenity. . . . Much more explicit statutory language is required "to lead to the conclusion that Congress intended to put the Federal Government in the business of policing the orderly conduct of strikes. . . ."

Acts of violence, such as the ones alleged in the instant case, occurring during a lawful labor dispute and resulting in damage to persons or property are punishable under state law. However, there is nothing in the language or history of § 1952 to "justify the conclusion that Congress intended [§ 1952] to work such an extraordinary change in Federal labor law or such an unprecedented incursion into the criminal jurisdiction of the States. . . ." Therefore, Counts 4 and 5 charging violations of 18 U.S.C. § 1952 are dismissed.

Id. (citations omitted).

[57] United States v. Culbert, 435 U.S. at 376-78; United States v. Warledo, 557 F.2d 721 (10th Cir. 1977); United States v. Jacobs, 543 F.2d 18 (7th Cir. 1976), *cert. denied*, 431 U.S. 929 (1977).

A New Criminal Code and *Enmons*

Each version of the recodification of the federal crimnal laws which has been reported by the Senate Judiciary Committee has included a definition of the crime of extortion which, to some extent, would have overruled *Enmons*. Although the bill reported to the Senate during the last session was more limited than its predecessors, it was still inconsistent with *Enmons*. The recodification bill reported to the House during the Ninety-Sixth Congress would have preserved the *Enmons* rationale, but barely survived concerted opposition.

Members of the Senate Judiciary Committee have repeatedly struggled with the definition of "extortion," in an effort to achieve a compromise between the competing interests which want to preserve the *Enmons* interpretation and those who wish to abolish the exemption from prosecution for otherwise prohibited activities which are designed to obtain legitimate labor objectives. The respective definitions of "extortion" which appeared in H.R. 6915 and S. 1722 were the latest in the line of definitions of that crime which began when the original recodification bill, S. 1, was reported to the Senate Judiciary Committee by its Subcommittee on Criminal Laws and Procedures during the Ninety-Fourth Congress.[58]

The definition of extortion in S. 1 eliminated the reference in the Hobbs Act to "wrongful use." The purpose of this omission was "to overturn the *Enmons* exception and to prohibit uniformly the use of extortionate means involving actual or threatened violence to obtain property, irrespective of whether the property could legitimately have been acquired in some other way."[59]

The Subcommittee explained in its report that the kind of picket-line violence, to which Justice Stewart referred in *Enmons*,[60] is not within the ambit of the Hobbs Act because such violence is not used to exact payment from the employer.[61] Supporters of the extortion provision in S. 1 argued that the report's language was sufficient to exclude minor

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[58] *See* Subcomm. on Criminal Laws and Procedures of Senate Comm. on the Judiciary, 94th Cong., 2d Sess., Report on the Criminal Justice Reform Act of 1975 (Comm. Print 1976) [hereinafter Report on Reform Act].

[59] *Id.* at 649.

[60] 410 U.S. at 410. *See also* note 44 *supra*.

[61] Apparently in part what motivated the Court in *Enmons* was the desire to avoid Federal Hobbs Act coverage over unlawful picket-line violence—usually the product of short tempers—in which minor but intentional damage is done to the property of the employer. However, in the Committee's view such acts do not fall within the purview of the Hobbs Act (*nor should they be Federally punishable*) since there is no intent thereby to obtain the employer's property through the use of force and the acts do not in fact cause the employer to part with his property; in short, such isolated acts of violence do not partake of the nature of extortion.

Report on Reform Act at 624 (emphasis added).

picket-line violence from prosecution. Nevertheless, it certainly would have worked in an "extraordinary change in federal labor law."[62] In fact, the subcommittee report suggested that the criminality of conduct by union leaders and members might turn on the size of the wage increase or other employment benefit sought in collective bargaining negotiations.[63] This proposition runs counter to the premise of the free collective bargaining system. Fortunately, the Senate Judiciary Committee failed to act on S. 1 during the Ninety-Fourth Congress.

Subsequently, during the Ninety-Fifth Congress, the Senate Judiciary Committee reported a new version of S. 1, designated S. 1437, which also included a definition of "extortion" substantially different from that in the Hobbs Act.[64] Again, the purpose of the definition was to overrule the *Enmons* decision by removing the word "wrongful," much like its predecessor in S. 1. In fact, the committee report which accompanied S. 1437 included an explanation for the proposed extortion section that was identical to the explanation in the Committee Report which accompanied S. 1.[65] The report explained that, where violence occurs in connection with collective bargaining, the question would be whether union demands in the bargaining table were "extortionate." The omission of the term "wrongful" from the definition of "extortion" necessarily implied that some wage demands, or other demands made by unions in collective bargaining, might be so inordinately high as to constitute extortion.[66] Thus S.1437 contained the same flaw which the *Enmons* Court found in the federal government's position in that case, that "[t]he Government's broad concept of extortion—the wrongful use of force to obtain even the legitimate union demands of higher wages—is

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[62] 410 U.S. at 411.

[63] The Subcommittee Report stated:

> As a result of the Supreme Court's holding in *Enmons*, the opportunity is created for unions or employers to cloak extortionate demands in the guise of an objective which could be legitimately sought through collective bargaining. For instance, rather than violate the Act (under *Green*) by seeking wages for superfluous services, unions may (under *Enmons*) demand and obtain with impunitiy inordinately high wages for the performance of existing and desired services through fear instilled by violence. Such a situation is, of course, highly undesirable.

REPORT ON REFORM ACT at 624.

[64] In pertinent part S. 1437 provided:

> § 1722. Extortion
>
> (a) Offense.—A person is guilty of an offense if he obtains property of another:
>
> (1) by threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged; or
>
> (2) under color of official right.
>
> (b) Affirmative Defense.—It is an affirmative defense to a prosecution under subsection (a)(1) that the threatened or feared injury or damage was minor and was incidental to peaceful picketing or other concerted activity in the course of a bona fide labor dispute.

[65] S. REP. NO. 96-605, 95th Cong., 1st Sess. 624-25 (1977).

[66] *Id.*

not easily restricted."[67]

For instance, under the extortion provision in S. 1437, the government would not have been required to show even that union leaders involved in collective bargaining were aware of, or participated in, violent conduct in order to indict them for extortion, as long as there was evidence that otherwise legitimate collective bargaining demands were regarded by the prosecutors and the jury as inordinately high. The suggestion that the criminality of conduct by union leaders or members might turn on the amount of benefits sought in negotiations runs counter to the premise of a system of free collective bargaining.

The affirmative defense in § 1722(b) of S. 1437 did not ameliorate these problems. Each of the three necessary elements of the defense was not only vague, but subject to interpretations which could have rendered the defense meaningless. Moreover, the burden of proving the elements of the affirmative defense would have been on the defendant. As a result, a prosecutor almost always would have been able to get the case to the jury.

Accordingly, organized labor attempted to eliminate the affirmative defense in § 1722(b) of S. 1437, in order to ensure that collective bargaining demands did not become an element of the crime of extortion, and could not be the subject of prosecutorial scrutiny. For this reason, Senator Edward M. Kennedy (D-Mass.) introduced an amendment to the extortion provision which was supposed to narrow its application, so that violence and threats of violence in the context of a labor dispute would not automatically become an element of the crime of extortion.[68]

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[67] 410 U.S. at 410.

[68] 124 CONG. REC. S17 (daily ed. Jan. 19, 1978). This amendment was accompanied by the following colloquy:

> Mr. Kennedy. Mr. President, the only purpose of this particular amendment is to clarify that should there be violence in the course of a labor dispute it will not be considered prima facie evidence of extortion.
>
> The Justice Department agreed to that degree of clarification, and that is the extent of the amendment. That is the sum and substance of it.
>
> Mr. Thurmond. Mr. President, I would like to make a brief statement about the amendment just offered by the Senator from Massachusetts. I do not object to the amendment, but I want to spell out its legal impact on the provisions in section 1722.
>
> This amendment would add a 'proof' subsection designed to prevent a trial judge from holding that, in a case described in the new subsection, mere proof that personal injury or property damage occurred during a labor dispute constitutes a sufficient showing of the causal relationship between the obtaining of property and the threat of fear based on that injury or damage to justify submission of that issue to the jury. It prevents such a holding directly by providing that proof of the coincidence of the labor dispute and the injury or damage in such a case is not 'prima facie evidence' of the causal relationship. It is true, of course, that such a causal relationship sometimes does exist where injury or damage occurs during a labor dispute. This proposed subsection, however, is based on the belief that where there is a cause and effect relationship, or the intent to obtain property by means of a threat or fear resulting from injury or damage, it should be

Eleven days later, near the end of debate on S. 1437, Senator Kennedy made the following statement in an effort to clarify the record as to the meaning of the new § 1722(b):

> The amendment is intended to avoid an implication that if violence occurs incidental to a labor dispute, the violence could be attributed to the union as a tactic for extortion where there was no evidence that that was the purpose of the violent conduct. The amendment means that more than the mere coincidence of a labor dispute and violence is needed to show that violence was intended to be a means of extorting anything from the employer. A case of extortion could not be proved in a labor dispute situation just because fighting or other violence occurs—this is the intent of the amendment.[69]

Despite these statements, substitution of the new proof section in § 1722(b) for the former affirmative defense section did nothing to eliminate the problems created by the proposed extension of the crime of extortion to activities undertaken in order to achieve legitimate labor objectives.

The implication of both Senator Kennedy's and Senator Strom

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possible to prove, in addition to that coincidence, some other circumstance adding to the strength of the inference of causation.

The proposed subsection does not address the question of which particular additional circumstance or circumstances, when proven along with that coincidence, will suffice to justify the submission of the issue to the jury. One which clearly would be sufficient in many cases to avoid a directed verdict is the circumstance that the defendant was, or conspired with, a person negotiating on behalf of the union involved in the labor dispute. The same result might obtain, where the repetitive or systematic nature of property damage, or its exact timing, contributed to an inference, based also on the fact that a labor dispute was pending at the time the damage was done, that the damage was purposeful rather than mindlessly vindictive.

Mr. Allen. Does not the amendment make it harder to obtain convictions in extortion prosecutions?

Mr. Kennedy. No, it would not. It simply clarifies the scope of the section. If there were any examples of obvious violence involved, disorderly conduct or any other kind of violence, those could easily be prosecuted at the local level and there is nothing in this particular amendment that would affect that.

All it says is that if there are instances of violence involved, it would not be considered prima facie evidence of extortion. That presumption may be overcome or rebutted, and in that sense it would require additional evidence.

Id.

[69] *Id.* at S763-64 (daily ed. Jan. 30, 1978).

In fact, the Government would not even attempt to prosecute as extortion most cases of violence associated with a labor dispute. The amendment is a recognition that tempers often flare in labor dispute situations. In a case where there was evidence that there was an agreement among people involved in the labor dispute to use violence against the employer as a means of achieving the goals of the labor union, such as dynamiting a plant, that evidence would establish a prima facie case.

In the absence of such evidence, a defendant would be entitled to dismissal of the case. In fact, in the absence of such evidence, such matters should be left to the States, which are fully capable of dealing with disorderly conduct, assault, property destruction, and other lesser crimes. And that is what these minor offenses are in the absence of a plan or conspiracy to extort.

Id.

Thurmond's (R-S.C.) initial statements was that evidence of labor violence in conjunction with collective bargaining, plus almost any other evidence indicating a causal relationship between the bargaining and the violence would be sufficient to get the case to a jury. Senator Thurmond's statement indicated that, in addition to evidence that a union negotiator was involved in the violent conduct, evidence sufficient to satisfy the causal relationship requirement might include, for example, evidence that property damage was systematic or repetitive, or evidence of suspicious timing, presumably of either the violence or the bargaining demands. Furthermore, Senator Thurmond's analysis, and at least Senator Kennedy's initial analysis, were consistent with the report which accompanied S. 1437 that evidence of inordinately high bargaining demands, in conjunction with evidence of violence, would also be enough to get the case to a jury. Nothing in Senator Kennedy's later statement altered the premise of the analyses of both Senators. The Senate passed S. 1437 on January 30, 1978, by a wide margin. The House of Representatives, however, failed to take action and the bill expired at the close of the 95th Congress.

Subsequently, a new bill to recodify the federal criminal laws was introduced in the Senate on September 7, 1979. S. 1722 was a revised version of S. 1437 and, therefore, initially included an extortion provision identical to the one passed by the Senate the previous year. Senator Patrick Leahy (D-Vt.) introduced an amendment to the extortion section in S. 1722, concidentally again designated § 1722, during the Judiciary Committee's consideration of the bill, which eliminated the proof section, § 1722(b), and replaced the word "wrongfully" in § 1722(a). Senator Leahy's amendment was designed to preserve the language of the Hobbs Act as well as the *Enmons* interpretation of that language.

The Leahy amendment was adopted by the Committee on November 27, 1979. Support for the Leahy amendment was based on two separate concerns. Several members of the Committee supported the amendment because they agreed that federal criminal proscription of the use of force to achieve legitimate collective bargaining demands would upset the delicate balance in labor-management relations which Justice Stewart recognized in *Enmons*. Other members of the Committee were more concerned about the "incursion into the criminal jurisdiction of the States" which the extortion provision in S. 1722 represented. Senator Leahy stated that state criminal authorities were better equipped to handle local labor violence.[70] Senator Cochran (R-Miss.) concurred

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[70] *Transcript of Proceedings: Hearing Held Before the Senate Comm. on the Judiciary, Executive Session Mark-Up on the "Criminal Code,"* 96th Cong., 2d Sess. 5-6 (Nov. 27, 1979).

> Mr. Chairman, as I stated earlier, I really think that we are dealing with an area: if we have improper activity on the part of either the employers or the labor unions in a labor

with Senator Leahy by stating that there was no clear need for federal intervention in local labor disputes.[71]

Opponents of the *Enmons* interpretation of the Hobbs Act, believing that the inclusion of the proof section in the extortion provision represented a major concession to supporters of *Enmons*, threatened to block reporting of S. 1722 to the floor of the Senate unless some compromise was agreed upon which at least removed major acts of violence from the protection of *Enmons*. Hence, the compromise version of the extortion provision represented yet another, albeit more limited, attempt to dilute the protection afforded by *Enmons* to legitimate collective bargaining objectives.[72]

Significantly, the committee report which accompanied S. 1722[73] indicated that the Judiciary Committee finally accepted the *Enmons* decision,[74] yet nonetheless, expressed continued rejection of an essential proposition of *Enmons*, which is that the use of violent means to obtain legitimate collective bargaining objectives, no matter how extreme,

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dispute where to achieve an objective it would be a legitimate subject of collective bargaining, I really think that is something that should be left up to the states.

I must admit that I feel that way: partly from my own experience as a prosecutor, but also from prosecutors that I have talked with in other states. What I am saying basically is that the old law made a great deal of sense. Local prosecutors, local courts, local police: they have a pretty good idea of what is going on.

They also tend to be able to keep these things in their proper perspective. And also, they deal directly with each other. There is no question in my mind that when the Federal authorities move in you have very little relationship with the local authorities on it, and it just is not handled the same way.

I really see no need. In fact, I found nothing, in going back through the testimony of anything else that says why we should expand Federal jurisdiction in this way.

Id.

[71] *See id.* at 6.

[72] In pertinent part S. 1722 provided:

§ 1722. Extortion

(a) Offense.—A person is guilty of an offense if he obtains property of another—

(1) by threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged; or

(2) under color of official right.

(b) Bar to Prosecution.—It is a bar to prosecution under this section that the offense occurred in connection with a labor dispute as defined in 29 U.S.C. 152(9) to achieve legitimate collective bargaining objectives, unless there is clear proof that the conduct which constitutes the threat or placing in fear required under subsection (a)(1) consists of a felony and the conduct was engaged in for the purpose of causing death or severe bodily injury in order to secure such objectives; and the Attorney General, Deputy Attorney General, or Assistant Attorney General for the Criminal Division certifies in writing that—

(A) the facts establish the existence of the additional elements of the offense required under this subsection;

(B) a federal prosecution should be commenced under this section; and

(C) the State is unable or unwilling to proceed with any equivalent prosecution relating to such conduct.

[73] S. REP. NO. 96-553, 96th Cong., 2d Sess. (1980).

[74] *Id.* at 645.

must be exempt from federal prosecution as extortion.[75] Thus, even

[75] The Committee Report which accompanied S. 1722 stated in relevant part:

As indicated earlier, the Committee intends to carry forward in a slightly more narrow fashion the effect of the limiting construction placed upon the Hobbs Act in the *Enmons* decision to the effect that labor officials were not covered for their extortionate activities against employers in the course of a labor dispute, if the objective sought was a permissible goal of collective bargaining. The committee concluded that the best way to perpetuate this major thrust of *Enmons* was to provide for a bar to prosecution in circumstances involving a labor dispute. Accordingly, the Committee has eliminated from the definition of the substantive offense itself the reference in the Hobbs Act to the "wrongful" use of force, violence, or threats, on which the Supreme Court majority predicated its holding, and intends that in situations not covered by section 1722(b) this offense be given an interpretation consistent with its deliberately broad language. The design of this offense is to prohibit the use of truly extortionate means to obtain property, irrespective of whether the property could legitimately have been acquired in some other way.

4. Bar to Prosecution

The bar to prosecution in subsection (b) of section 1722 states the careful balance struck by the Committee between the need to include an effective extortion statute in the new Federal Criminal Code and the need to avoid "working an extraordinary change in federal labor law [and] . . . an unprecedented incursion into the criminal jurisdiction of the States," and to respect Congress' "traditional reluct[ance] to define as a federal crime conduct readily denounced as criminal by the States."

To meet the substantial concerns just noted, the bar to prosecution prohibits application of this provision to labor disputes involving "legitimate collective bargaining objectives" subject to the exception of the bar described below. That phrase as used in subsection (b) encompasses activities to secure noncorrupt labor union objectives even if, as in *Enmons*, those activities would violate other laws and excludes such objectives as efforts to obtain personal payoffs or payments for superfluous services.

The exception to the bar stated in subsection (b) is intended to spell out the exclusive circumstances which may give rise to a Federal extortion prosecution involving unlawful conduct that occurs during a labor dispute to achieve legitimate collective bargaining objectives. In essence this exception adds two elements to the crime. First, the government must prove that the defendant engaged in conduct against the person which, if there were Frederal jurisdiction, would be a felony under the code. This element requires an act and not a mere statement or threat to act. Second, the government must prove that the defendant acted not merely "knowingly" as that term is used in the code but with the preestablished intent to (a) cause death or severe bodily injury and (b) by so doing to force acceptance of the union's demands. "Severe bodily injury" means protracted disabling or disfiguring bodily injury that precludes the individual from gainfully working.

The phrase "clear proof," which has its origin in Section 6 of the Norris-LaGuardia Act (29 U.S.C. Section 106), as used here imposes on the government the obligation to establish by direct evidence that the conduct against the person included in the exception was undertaken for the purpose specified therein. Without such proof, violence, no matter how serious, during a labor dispute is outside the Federal extortion law.

In order to reinforce traditional principles of federalism the bar is not overcome (and the Federal government may not initiate an investigation or prosecution of the illegal conduct) unless the Attorney General, Deputy Attorney General, or Assistant Attorney General for the Criminal Division certifies in writing that (a) the facts establish the existence of the additional elements of the offense required by the exception to the bar; (b) a Federal prosecution should be commenced under this section; and (c) for reasons other than insufficient evidence the State refuses to proceed with a prosecution relating to the conduct against the person specified in the exception to the bar. Such a certification must be based on evidence obtained by or available to the State prior to the Federal government's involvement in the matter; however, once the certification is made, this provision does not limit the Federal government's ability to secure and rely on additional evidence.

Id. at 649-52.

though the extortion provision in S. 1722 was a substantial improvement it suffered from many of the same deficiencies which made previous versions unacceptable. Section 1722 reflected a concerted effort by the Committee to meet the dual justifications for the *Enmons* holding: avoidance of an extraordinary change in federal labor law, and an unprecedented incursion into the criminal jurisdiction of the states. Unfortunately, the draftsmen again missed the mark, and the results could have been exactly what Justice Stewart sought to avoid in *Enmons*.

For instance, the bar to prosecution in § 1722(b) would itself have had a substantial chilling effect on the right of employees to "engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection" provided in § 7 of the National Labor Relations Act.[76] Section 111 of S. 1722 defined a "bar to prosecution" as "a ground for terminating a prosecution in favor of a defendant on a ground unrelated to guilt or innocence." Thus, the bar to prosecution in § 1722(b) could not be raised until a defendant was arrested and indicted for extortion. Consequently, many union leaders and their members would have been discouraged from participation in lawful collective bargaining activities for fear that such activity might subject them at least to arrest and indictment for extortion if violent misconduct occurred during the pendency of the collective bargaining.

This result obtains because § 1722(b) applies to instances involving "a labor dispute as defined in 29 U.S.C. § 152(9) to achieve legitimate collective bargaining objects." Section 2(9) of the Act defines the term "labor dispute" broadly, as including:

> any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.[77]

Section 1722(b) added to this broad definition of a labor dispute the requirement that it must be aimed at achieving "legitimate collective bargaining objectives." Earlier versions of the extortion provision implied that inordinately high wage demands might not be legitimate collective bargaining objectives. Section 1722(b) offered no guidance on this issue. Thus, the same objections raised to the earlier versions of the definition of extortion which appeared in S. 1 and S. 1437 were equally applicable to the recent version in S. 1722.

Section 1722(b) also attempted to avoid an incursion into the criminal jurisdiction of the states by including a requirement that the state in

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[76] 29 U.S.C. § 157.

[77] 29 U.S.C. § 152(9).

which the alleged unlawful activity occurred must be found by the Attorney General of the United States, his Deputy or his Assistant for the Criminal Division, to be unable or unwilling to proceed with "any equivalent prosecution relating to said conduct." There was, however, no definition of what constitutes any equivalent prosecution relating to said conduct. For instance, must the equivalent prosecution be for extortion? Does the measure of equivalency include a comparison of the penalties under state law with those under federal law? Moreover, the standards by which the state's unwillingness or inability to prosecute would be measured by the Attorney General are undetermined. Problems such as these could have rendered § 1722(b) meaningless insofar as it was intended to avoid incursion into the criminal jurisdiction of the states.

These and other defects in the extortion provision of S. 1722 prompted former Secretary of Labor F. Ray Marshall to write to then Attorney General Benjamin R. Civiletti on January 16, 1980, expressing strong opposition to the extortion provision in S. 1722, and supporting retention of the Hobbs Act definition of extortion as interpreted in *Enmons* in the Criminal Code bill then pending before the House Judiciary Committtee. H.R. 6915, as originally drafted by the Subcommittee on Criminal Justice, completely overruled *Enmons* by adopting a definition of extortion which prohibited the use or threat of violence to obtain the property of another, with his consent, whether wrongful or otherwise.

On March 5, 1980, after Labor Secretary Marshall's letter signalled the Carter administration's position on the issue, the Subcommittee voted to amend the extortion provision in H.R. 6915[78] to include the term "wrongfully," thereby preserving the *Enmons* interpretation. Immediately thereafter, however, Representative Sam B. Hall (D-Tex.) proposed an additional amendment to the extortion provision which stated that the fact that the violence committed by the accused party was in furtherance of a legitimate objective or activity would not be a defense to a prosecution for extortion. Consequently, the extortion provision which the Subcommittee sent to the Judiciary Committee on March 11, 1980 was internally inconsistent in that it preserved the *Enmons* interpretation of extortion in the first subsection and then seemingly overruled it in the second.[79]

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[78] The extortion provision in H.R. 6915 was designated as section 2522.

[79] The extortion provision submitted to the House Judiciary Committee, in relevant part, read as follows:

§ 2522. Extortion

(a) Whoever knowingly threatens or places another person in fear that—

(1) any person will be subjected to bodily injury or kidnapping; or

(2) that any property will be damaged;

Thereafter, Congressman John Sieberling (D-Ohio) introduced an amendment to § 2522 during consideration of the bill by the full Judiciary Committee which completely eliminated the Hall amendment. Congressman Sieberling explained that the purpose of his amendment was to preserve the *Enmons* interpretation of extortion in order to remain consistent with national labor policy and preserve the integrity of the states' criminal jurisdiction. The Committee adopted the Sieberling Amendment. Subsequently, on July 2, 1980, the Judiciary Committee voted by voice vote to recommend H.R. 6915, as amended, to the House of Representatives.[80] No further action was taken on H.R. 6915 during the Ninety-Sixth Congress.

THE CASE FOR PRESERVING THE *ENMONS* INTERPRETATION OF EXTORTION

Many of those who want to revise the definition of "extortion" in the proposed recodification of the federal criminal laws simply cannot justify what appears to be a special exception for union leaders and members from prosecution for extortion when they use "truly extortionate means to obtain property, irrespective of whether the property could legitimately have been acquired in some other way."[81] This concern must be addressed in order to justify continuation of the *Enmons* interpretation of extortion in a future recodification of the federal criminal laws.

The *Enmons* interpretation of extortion does not give *carte blanche* to hooligans and racketeers to threaten, destroy, or injure others under the protective shield of a labor dispute. Those persons should be and are, prosecuted under state and federal law for whatever substantive crimes they commit. The issue is not whether such acts should be punished, but whether the federal crime of extortion should be expanded to include violence committed during a legitimate labor dispute. The *Enmons* decision and an analysis of the various interests involved indicated that such an expansion is unwarranted.

The House Judiciary Committee Report which accompanied H.R. 6915 explained the rationale for preserving the *Enmons* interpretation of the crime of extortion as follows:

By thus limiting the federal definition of extortion, the Committee is not

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and thereby wrongfully obtains property of another, or attempts to do so, commits a class C felony.

(b)(1) It is not a defense to a prosecution for an offense under this section that the conduct constituting the offense was in furtherance of a legitimate objective or activity.

[80] The extortion provision included in H.R. 6915 as reported to the House by the Judiciary Committee was identicial to the extortion provision quoted in relevant part in note 79 *supra*, except subsection (b)(1) was deleted in its entirety.

[81] S. REP. NO. 96-553 at 650.

> condoning the use of violence for any purpose. Rather this limitation embodies the Committee's judgment that the policing, through the criminal process, of such matters as local labor disputes is not an appropriate matter for the Federal Government. Although the Federal Government has expressed a significant interest in ensuring the proper conduct of labor-management relations as they affect interstate commerce, the Government already has a significant arsenal of weapons with which to attack unfair labor practices.[82]

The committee report explained that ample federal law applicable to incidents of violence arising during labor disputes already exists.[83] The considerations which confronted the Supreme Court in *Enmons* are equally relevent today. Violent misconduct in the course of collective bargaining and attempts to coerce an employer are unfair labor practices under the National Labor Relations Act.[84]

Thus, if a union or its agents engage in violent activities or threaten violence, the National Labor Relations Board (NLRB) is authorized to proceed against the labor organization and the individuals involved.[85] Remedies available to the NLRB include the authority to issue orders to cease and desist from the specific unfair labor practices, require the offending union to post copies of a notice of the Board's determination at all union offices and meeting places, and even mail copies to all employees of the company involved,[86] and publish copies of newspapers of general circulation in the locality where the violence occurred.[87] Where the coercive misconduct is especially serious, the Board can even decertify the union as the exclusive bargaining representative for the affected employer's employees.[88]

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82 H.R. REP. NO. 96-1396, 96th Cong., 2d Sess. 299 (1980).

83 *Id.* at 300 n.1.

84 29 U.S.C. § 151 *et seq.* (1976).

85 Such activities have been held to violate § 8(b)(1)(A) of the National Labor Relations Act, 29 U.S.C. § 158(b)(1)(A), which makes it an unfair labor practice for a labor organization to restrain or coerce *employees* in the exercise of their rights guaranteed by § 7 of the Act, 29 U.S.C. § 157, when such actions occur in contexts in which employees are likely to learn of them. *See* NLRB v. Union Nacional de Trabajadores, 540 F.2d 1 (1st Cir. 1976), *cert. denied*, 429 U.S. 1039 (1977); NLRB v. Imparato Stevedoring Corp., 250 F.2d 297 (3d Cir. 1957); NLRB v. Furriers Joint Council, 224 F.2d 78 (2d Cir. 1955); Laura Modes Co., 144 N.L.R.B. 1592 (1963). Moreover, specific intent to restrain or coerce employees is not required. *See* NLRB v. Local 140, United Furniture Workers, 233 F.2d 539 (2d Cir. 1956).

86 NLRB v. Union Nacional de Trabajadores, 540 F.2d at 11; Texas Gulf Sulphur Co. v. NLRB, 463 F.2d 778, 779 (5th Cir. 1972); J.P. Stevens & Co. v. NLRB, 461 F.2d 490, 495 (4th Cir. 1972).

87 NLRB v. Union Nacional de Trabajadores, 540 F.2d at 12; J.P. Stevens & Co. v. NLRB, 417 F.2d 533, 538-40 (5th Cir. 1969); Alexander Stafford Corp., 118 N.L.R.B. 79, 82 (1957), *enf'd sub nom.* International Ass'n of Heat & Frost Insulators v. NLRB, 254 F.2d 955 (D.C. Cir. 1958).

88 NLRB v. Union Nacional de Trabajadores, 540 F.2d at 13. *See also* NLRB v. David Buttrick Co., 361 F.2d 300 (1st Cir. 1966); International Bhd. of Teamsters, Local 671, 199 N.L.R.B. 994 (1972); Hughes Tool Co., 104 N.L.R.B. 318 (1953).

In the interim, the Board has the power, upon issuance of an unfair labor practice complaint against a union or individual members, to seek an injunction against further violent misconduct.[89] The National Labor Relations Act also provides that any finding by the Board of an unfair labor practice involving coercive misconduct is enforceable by the United States courts of appeals.[90] Moreover, the Board can seek civil and criminal contempt sanctions against respondents who refuse to comply with the courts' enforcement orders.[91]

In addition to the remedies provided by federal law, a number of remedies under state law are available to victims of coercive misconduct in the course of a labor dispute. State and local law enforcement agencies can prosecute offenders under the various state and local criminal laws applicable to such misconduct. The House Judiciary Committee Report accompanying H.R. 6915 observed that "no real evidence has been produced to show that states cannot adequately handle incidents of violence arising from labor disputes, nor that the limited resources of the FBI could be used to investigate such incidents more effectively than the resources of local and state law enforcement."[92]

Several civil remedies are also available under state law to victims of violence and coercion during labor unrest. State courts may enjoin violence and threatening activity,[93] as well as award compensatory and punitive damages for the consequences of such actions.[94] In sum, there is no need to provide the federal government with an additional means of prosecuting such activity because of the ample arsenal of weapons already available to deter such misconduct in the course of a labor dispute.

The potential deterrent effect of the application of a federal extortion statute to misconduct in the course of labor disputes is far outweighed by the extraordinary change in federal labor law that would result. Indeed, it would "put the Federal Government in the business of policing the orderly conduct of strikes."[95] Moreover, it could easily lead to governmental abuse.

Revision of the extortion statute to overrule the *Enmons* decision

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89 National Labor Relations Act, § 10(j), 29 U.S.C. § 160(j) (1976).

90 §§ 10(e) & (f), 29 U.S.C. §§ 160(e) & (f) (1976).

91 *See, e.g.*, NLRB v. Teamsters Local 327, 592 F.2d 921 (6th Cir. 1979).

92 H.R. REP. NO. 96-1396, 96th Cong., 2d Sess. 299.

93 United Automobile Workers v. Anderson, 351 U.S. 959 (1956), *aff'g per curiam*, 245 Minn. 274, 72 N.W.2d 81 (1955); Allen-Bradley Local 1111 v. WERB, 315 U.S. 740 (1942).

94 United Automobile Workers v. Russell, 356 U.S. 634 (1958); UMW Dist. 50 Constr. Workers v. Laburnum Constr. Co., 347 U.S. 656 (1954); Solo Cup Co. v. International Bhd. of Pulp, Sulphite & Paper Mill Workers, 237 Md. 611, 205 A.2d 213 (1964), *cert. denied*, 380 U.S. 976 (1965).

95 United States v. Enmons, 410 U.S. at 411.

would substantially disrupt the delicate balance already struck by the Congress in the labor-management relations area. Admittedly, labor disputes inherently involve considerable tension on both sides. Under such circumstances, strike-related misconduct does occur. If *Enmons* is overruled, any violent misconduct during an otherwise legitimate labor dispute could become grounds for a federal indictment for extortion.

Subsection (b) of the extortion provision in S. 1722 failed to cure this problem. Subsection (b) provided that violence during the course of a legitimate labor dispute in and of itself would not constitute prima facie evidence that the property was obtained by such conduct. However, it certainly did not bar a prosecution, and provided no indication of what would constitute a prima facie case. Presumably, evidence linking the defendant to the labor dispute, or testimony by the employer that he acceded to union demands because he was in fear of the defendant, could have been sufficient to support a conviction. Any legislation which creates the possibility that union officials and members may risk a federal indictment for extortion because of picket-line misconduct would have a chilling effect on the exercise of their federally protected rights to strike and to engage in any concerted activity to improve their wages, hours, and working conditions.

These considerations support a decision to refrain from expanding the federal extortion statute to include misconduct in the context of a legitimate labor dispute, and adopt instead the current scope of the Hobbs Act as interpreted in the *Enmons* case. This position was reflected in the extortion provision in H.R. 6915. Preservation of the *Enmons* interpretation is not only consistent with the National Labor Policy, but is also consistent with the underlying principle of the recodification of the federal criminal laws not to expand federal jurisdiction absent a showing of compelling need.[96] Available evidence does not indicate that there is a compelling need to expand the federal extortion statute into violent activities in the course of legitimate labor disputes.

CONCLUSION

The legislative history of the proposed recodification of the federal criminal law indicates that a definition of the crime of extortion which will punish the use of extreme acts of violence as a means of obtaining higher wages and other employment benefits without also including minor incidents and acts of violence inherent in labor disputes is impossible to achieve. The danger of overreaching federal jurisdiction and overextending the intended limits of such a statute greatly outweigh any benefit which might be gained by overruling the *Enmons* decision. In

[96] H.R. REP. NO. 96-1396, 96th Cong., 2d Sess. 300.

light of other federal, state, and local statutes which already prohibit the substantive criminal actions to which the proposed expansion of the federal crime of extortion would be addressed, both policy and practice require recognition of the Supreme Court's decision in *Enmons* that the crime of extortion is inapplicable to violent misconduct in the course of legitimate labor disputes.

19-593 O—83——13

LETTERS TO SUBCOMMITTEE

American Farm Bureau Federation

WASHINGTON OFFICE
600 MARYLAND AVE., S.W.
SUITE 800
WASHINGTON, D.C. 20024
AREA CODE 202 - 484-2222

March 23, 1983

Honorable John P. East, Chairman
Separation of Powers Subcommittee
Senate Judiciary Committee
B16 Russell Senate Office Building
Washington, DC 20510

RE: S. 462 - Hobbs Act

Dear Senator East:

We understand that the Judiciary Committee will shortly consider S. 462 to restore to the Hobbs Act jurisdiction over labor unions and union officials that engage in extortion or the threat of extortion to achieve their goals.

Farm Bureau recognizes the right of workers to voluntarily form unions for the purpose of collective bargaining and to protect the interests of their members; but we believe the Supreme Court, in the Enmons case, made an incorrect interpretation of the clear intent of Congress to include unions under the jurisdiction of the Act.

While S. 462 does not fully address the widespread problem of violence and threats of violence being used by labor unions to coerce employers and non-union employees in this country, it does at least apply the same standard to acts of extortion by labor unions that others must observe. There is no justification for labor unions or their officials remaining exempt from the Hobbs Act. S. 462 makes it clear that the Act would not be administered in such a way as to interfere with the normal, peaceful, and legal activities of unions. A vote against S. 462 is a vote to sanction the union exemption enacted by the Court, not the Congress.

The argument that the problems of labor violence should be left to local and state law enforcement would make sense only if the Act is repealed. Violence as a part of labor disputes still would be a matter of heavy responsibility on the part of local and state law enforcement if this bill is enacted, since S. 462 does not provide for federal preemption.

Farm Bureau's three million plus member families are citizens and taxpayers who have a legitimate concern about violence in our society from whatever source. The use of violence or threat of violence must not be condoned and is a matter of national interest that should be addressed by the Congress.

We commend the sponsors of this legislation and urge that the bill be approved by the Judiciary Committee and sent to the floor of the Senate as soon as possible.

We ask that this letter be made a part of the hearing record on this bill.

Sincerely,

John Datt

John C. Datt
Secretary and Director
Washington Office

lh
cc: Subcommittee Members
Senator Thurmond

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

HILTON DAVIS
VICE PRESIDENT
LEGISLATIVE AND POLITICAL AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062
202/463-5600

April 7, 1983

The Honorable John P. East, Chairman
Separation of Powers Subcommittee
Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing on behalf of the over 226,000 members of the U.S. Chamber to express support for the amendments to 18 U.S.C. § 1951 (Hobbs Act), proposed in S. 462.

The Hobbs Act was passed in 1946 as an amendment to a federal anti-extortion statute known as the Anti-Racketeering Act of 1934. The express language of the Hobbs Act makes it a federal crime to commit, or attempt or conspire to commit, acts of extortion that obstruct interstate commerce.

A 1973 ruling of the U.S. Supreme Court diminished the effectiveness of the Act in combatting the violence that may accompany labor disputes. In this 5-4 decision that is difficult to reconcile with the clear language of the statute, the court, in U.S. v. Enmons, held that Congress intended that coverage of the Hobbs Act be limited to situations where the goal of the misconduct is wrongful. Thus, the Act's prohibitions do not apply where the object is a legitimate union goal, such as higher wages. In effect, the court created for labor unions an immunity from federal prosecution for violent extortionate behavior.

This "ends justify the means" gloss added to the Hobbs Act by Enmons needs to be removed. First, the Chamber is convinced that the court misread congressional intent (Justice Blackmun, whose concurrence was the swing vote, found the legislative history cloudy, and invited Congress to clarify the Hobbs Act). Justice Douglas, who was a member of the Supreme Court when the Hobbs Act was passed, strongly disagreed with the majority's interpretation of legislative history. In dissent, he noted that "the regime of violence, whatever its precise objective, is a common device of extortion and is condemned by the (Hobbs) Act."

Second, permitting perpetuation of the Enmons "ends-means" logic has created the perception of congressional approval of a doctrine that treats labor unions engaged in violent extortionate behavior as above the law. The Chamber believes that Congress, in passing the Hobbs Act, intended that all parties to a labor dispute be held equally accountable under the law for injuries caused by their improper actions, even though the violence and threats may have been undertaken for the purpose of obtaining legitimate objectives of collective bargaining.

Finally, Congress should reaffirm the objectives sought in passage of the Hobbs Act because there is a need for federal intervention to curtail violence and threats of violence during labor disputes. Too often, state and local authorities are loath to become involved in these disputes because of political sensitivities. In fact, the federal government has long been the principal overseer of parties engaged in collective bargaining and labor relations.

Clearly, acts or threatened acts of violence have no proper role in legitimate labor negotiations or disputes. S. 462 would eliminate the judicially-created union immunity to federal prosecution under the Hobbs Act. I respectfully request that you support the effort to close this loophole by enacting S. 462.

Your consideration of our views will be appreciated and I respectfully request that this letter be made a part of the hearings record.

Cordially,

Hilton Davis

cc: Subcommittee Members
James M. Sullivan - Majority Counsel
Mary B. Trolland - Minority Counsel

Associated
Builders and
Contractors, Inc.

729 15th Street, N.W.
Washington, D.C. 20005
(202)637-8800

April 21, 1983
Hand Delivered

The Honorable John East
United States Senate
Washington, D.C. 20510

Dear Senator East:

On behalf of the 16,000 member firms of the Associated Builders and Contractors, I would like to urge you to favorably report Senator Grassley's bill, S. 462, from the Separation of Powers Subcommittee.

ABC strongly supports this bill in its present form. Senator Grassley's bill is a narrowly defined proposal to designate serious incidents of extortion as a federal crime. This statute would not be invoked to cover minor acts such as a scuffle on a picket line. Furthermore, it would apply equally to unlawful acts committed by either management or labor.

Again, we urge your support for S. 462 in its present form.

Thank you for your consideration of our concerns.

Sincerely,

James P. Schlicht

James P. Schlicht
Director
Government Relations

National Association
of Manufacturers

FRANCIS M. LUNNIE, JR.
Assistant Vice President
Industrial Relations and
Director, Labor Relations

April 28, 1983

The Honorable John East
Chairman, Subcommittee on Separation of Powers
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The National Association of Manufacturers (NAM) is pleased to submit this statement in support of S. 462, an amendment to the Hobbs Act, and asks that it be incorporated into the hearing record.

The NAM is a voluntary business organization which represents more than 12,500 member companies, eighty percent of which are considered small- or medium-sized businesses. NAM members produce nearly 75 percent of the nation's manufactured goods and employ approximately 85 percent of all workers employed in manufacturing. The NAM is also affiliated with an additional 158,000 businesses through its Associations Department and the National Industrial Council.

As would be expected, given the broad base of NAM manufacturing membership, we have a keen interest in preserving the integrity of the collective bargaining process. However legitimate collective bargaining objectives may be, their pursuit does not justify the use of violence, threats, or extortion. Further, such acts are contrary to the public interest.

We, therefore, commend Senator Grassley's attempt to close the loophole created by the Supreme Court in the Enmons case whereby union officials are exempt from prosecution under the Hobbs Act for violence committed in the furtherance of legitimate union objectives. The NAM believes anyone--employer, employee, or labor organization--who commits an extortionate act which interferes with interstate commerce should be held accountable under the law.

Contrary to critics of this proposed legislation, S. 462 will in no way interfere with the right of unions to carry on peaceful strikes. Some fear that conduct incidental to peaceful, legitimate picketing; minor damage or injury; and/or unintentional accidents would be subject to federal prosecution. S. 462 addresses these concerns by providing an affirmative defense to prosecution under those circumstances.

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The bill is not an attempt to infringe on lawful activity by unions. Instead, S. 462 would rightfully subject concerted, major acts of violence, threats, or extortion to full federal prosecution. This is particulary critical given that past experience has shown that many state and local law enforcement agencies are simply unable or unwilling to take action against union violence. Allowing the federal government to prosecute instigators of violent activity would contribute to an environment in which productive negotiations can take place.

In closing, the NAM again wishes to express its appreciation for the opportunity to contribute to the Subcommittee's deliberations on this important matter and to urge your favorable consideration of S. 462. Should there be any questions or further information required, please contact the undersigned.

Sincerely,

Francis M. Lunnie, Jr.
Assistant Vice President
Industrial Relations
NAM

FML/cc

[From Reader's Digest, Aug. 1981]

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"We'll Get Those Scabs!"

Union violence is occurring at an alarming rate nationwide. Here is what happened when five courageous women dared to defy one union's campaign of terror

BY RANDY FITZGERALD

DEANNA USSERY was watching television and didn't hear the pickup truck stop in front of her modest Hot Springs, Ark., home one cool April evening. Shotgun blasts baroomed in the darkness. A bedroom window blew apart, and shot peppered the bed where her eight-year-old daughter, Sheila Ann, usually slept (by a stroke of fortune, the girl was away overnight). The gunmen sped away.

Deanna Ussery's nightmare had begun a month earlier after she and five other women had crossed a United Steelworkers Union picket line at the plant of National Rejectors, Inc. Hot Springs seems an unlikely locale for union violence. Nestled in the Ouachita National Forest, it has little heavy industry—two aluminum plants and National Rejectors, which manufactures coin and currency-changing machines. But in 1976 a siege of terror began when, at a meeting with the National Rejectors plant managers, union president Frankie Joe Russell threatened a company vice president. Fired, Russell continued to boss the union from his home.

A heavyset man in his 40s, Russell had run the union for 15 years, boasting he could shut down the company with a snap of his fingers. True to his word, when the local's contract expired in January 1978, Russell demanded a strike to force his reinstatement with full back wages and to satisfy other grievances.

There was no secret ballot, and only three of the company's 350

employees defied the strike call: 56-year-old Sally Boyd, a grandmother who had refused to join Frankie Joe's union and who needed her paycheck to care for a disabled husband; Dana Milligrock, whose young son was about to undergo surgery and who had voted against the walkout because Russell "should have been fired"; and another employee who had a small child to support. (Not long after, she quit her job, frightened by union threats.) Along with National Rejectors supervisory personnel, these three women kept the plant partially functioning.

As the strike entered its eighth week, discontent began to surface among the union membership—the strike was bleeding their finances dry just to reinstate a man with whom few of them had even spoken. Ramona Drobena, pregnant and separated from her husband, Sharon Gentry, divorced with two young sons, and Deanna Ussery, with seven children and a jobless husband to support, decided to resign from the union and go back to work.

The Ugly Turn. Three nights later, on a dark country road, Sally Boyd noticed a truck following her. She sped up to 75 m.p.h. on the narrow, curving, gravel road, but the lights of the truck remained in sight. She crossed the top of a hill and found herself headed into a pickup truck blockading the road. She swerved into a ditch, smashing her car's front end, but managed to keep going—and escaped.

A few days later, the 64-day strike ended. Faced with financial losses, National Rejectors gave in to union demands and reinstated Frankie Joe Russell with full back pay. The union leadership had won. Now it intended to settle some old scores. "We'll get those scabs!" Frankie Joe Russell had told a union meeting. "We'll make it so rough they'll have to quit." It was not an idle threat.

When Ramona Drobena and Sharon Gentry punched their time cards the first morning after union workers returned, a supervisor pulled them aside and advised them to go everywhere together for protection. The first time they walked to a rest room, 15 to 20 union members gathered around screaming obscenities.

On the second day, the working atmosphere at the plant turned uglier. Oil and grease were smudged on Sharon Gentry's and Dana Milligrock's chairs. Obscene signs were placed over their work stations. Thirty or more women walked past Sharon Gentry and Ramona Drobena shouting, "We'll get you. We know where your children are." Sally Boyd had toilet water thrown at her in the rest room. When Dana Milligrock got into her car after work, one union member hammered a window with a tire tool while another grabbed her by the hair, attempting to yank her to the parking lot. She hit the accelerator and raced out onto the highway

with several carloads of union workers in pursuit. Police interceded and escorted her home.

Howling Rage. Ramona Drobena couldn't sleep. Her hours were filled with a constant anxiety. She visited her doctor, who warned her, "Ramona, if you want to keep your baby, you had better get out of there." He wrote her a medical leave of absence, and she never worked another full day at National Rejectors. Sally Boyd left the plant to be with her now seriously ill husband.

The incessant efforts to portray the remaining three women as a threat to the union bore bitter fruit, as members of the rank and file were worked into a frenzy against a common enemy. Violence seemed inevitable. One day when the three women emerged from the exit at quitting time, they were confronted by scores of union members brandishing tire tools. The crowd began howling with rage, some of them jumping up and down on their vehicles and waving their fists. "They're fixing to wipe us out," Deanna Ussery cried. Finally, police dispersed the crowd and escorted the three terrified women from the parking lot.

Fear and Suffering. After the show of force in the parking lot, Deanna Ussery and Sharon Gentry both took medical leaves of absence. Only Dana Milligrock, a shy, soft-spoken woman whose silence seemed especially to infuriate the union members, chose to return to work the next day. When her shift ended and she walked to her car, she discovered that the union had delivered another warning. Her car windows had been broken, the tires slashed, and "scab" was painted in yellow across the dark-blue hood. It signaled a new escalation in the campaign of harassment.

Soon after Sharon Gentry's medical leave took effect, her two sons, 11 and 9, were returning home from a grocery store one afternoon when they noticed a maroon-colored car following them. Suddenly, the car turned sharply and headed directly toward the children. They jumped off an embankment and crawled into a culvert, where they hid until a neighborhood search party found them that night.

Then came the shotgun attack on Deanna Ussery's home. After that, one after another, the five women resigned from National Rejectors. The shooting had forced them to choose between their right to work and their right to live in peace. It appeared that the terror tactics against them had succeeded.

Outraged Citizens. But the five courageous women found a means to fight back. In Washington, D.C., the National Right to Work Legal Defense Foundation agreed to file a lawsuit on their behalf against Local 6178 and 16 of its members, charging that the union had orchestrated a terror campaign to force the women from their jobs.

When the suit came to trial in Hot Springs on May 9, 1980, the

foundation's three youthful attorneys—the oldest was 31—were apprehensive about their chances. Representing the union was a powerful Arkansas law firm that specialized in labor litigation.

But what no one had anticipated was the outrage that the union campaign had generated among the citizens of Hot Springs. The six-day trial ended with the jury awarding damages of $250,000 plus interest, divided equally among the five women. The union's appeal was dismissed by the Arkansas Supreme Court. On February 17 of this year, the women received their checks.

For each it was a moment of profound relief, but the victory had been won at terrible cost—not one feels she can ever again work at National Rejectors where Frankie Joe Russell remains the undisputed union boss. The emotional scars are deep. As Ramona Drobena puts it, "Not a day goes by that something doesn't remind me of the ordeal. Maybe in 20 years I'll forget, or at least no longer be frightened."

THE EXPERIENCE of Ramona Drobena and her colleagues is by no means unique. From coast to coast union violence is occurring at an alarming rate. The U.S. Treasury Department's Bureau of Alcohol, Tobacco & Firearms reports that labor-related violence has replaced political terrorism as the No. 1 cause of property damage from explosives in this country. No section of the nation remains untouched by the wave of lawlessness:

Elizabethton, Tenn.: Striking steelworkers went on a rampage here two years ago, unleashing a series of bombings, shootings and acts of arson against non-striking workers at the Jarl Extrusions Company. A company security guard was shot to death, a second employee shot at as she drove to work, a third severely beaten, suffering permanent injury.

Forsyth County, Georgia: Arsonists set fire to the home of Doris Glover, her sister and nephew. Luckily they were sleeping in an adjacent trailer. But the house was burned to the ground. Glover had defied a union strike order at a Frito-Lay plant.

Ravenna, Ohio: At least 40 striking teachers in this small community were arrested on charges of riot and obstruction of official business.

Thousand Oaks, Calif.: A Teamsters Union gang stormed the warehouse of Redman Moving Company, damaging 12 of its 14 trucks. Other union members followed a Redman truck all the way to Connecticut, where they reduced the cab of the 18-wheeler to a burned-out hulk. Why? The owner of Redman had complained that the Teamsters were coercing his employees.

As the recent wave of union violence has demonstrated, many state and local officials cannot—or will not—ensure worker safety

during labor disturbances. Local authorities more often than not choose to remain uninvolved.

The Reagan Administration can launch a long-overdue counteroffensive. The Justice Department can push for Congressional revision of the Hobbs Act to reverse a 1973 Supreme Court decision that exempts organized labor from federal prosecution for violence in interstate commerce. Chairman Strom Thurmond (R., S.C.) of the Senate Judiciary Committee has introduced legislation covering violence by anyone—business or labor—that disrupts commerce and the movement of goods. Union terrorism can be brought under control if only Congress and the Administration have the will to act.

[From the Los Angeles Times, March 18, 1980]

Five Teamsters Cleared of Racketeering Charges

(By Gene Blake)

Charges of racketeering, embezzlement and arson against five Southern California Teamsters Union officials involved in a dispute with a trucking company were dismissed Monday by U.S. District Judge Robert M. Takasugi.

Relying primarily on a 1973 U.S. Supreme Court decision, Takasugi ruled that federal statutes under which the five officials were charged did not apply to union activities.

He dismissed all 10 counts of an indictment brought against Sten Thordarson, Craig Dunbar and Charles Wise, secretary-treasurer, business agent and vice president, respectively, of Teamsters Local 389, and Martin Fry and Martin Salgado, secretary-treasurer and trustee, respectively of Teamsters Local 186

They were accused of using fear, threats and violence in an attempt to unionize the Redman Moving and Storage Co. of Thousand Oaks.

In 1978, the small company was the target of extensive vandalism of its 14-truck fleet in which 12 of the vehicles were damaged.

The five were accused of heading a campaign that included the burning of Redman trucks in Van Nuys and Ridgefield, Conn., and the attempted destruction of a third vehicle in Arizona.

They were specifically charged with interstate travel in aid of racketeering, damage by explosives to vehicles used in interstate commerce, embezzlement of union funds and racketeering.

But Takasugi found the case analogous to the 1973 case in which union members who allegedly blew up transformers were charged with extortion under the federal Hobbs Act. The U.S. Supreme Court held that union strike action did not fall under the Hobbs Act.

Similarly, Takasugi ruled, the federal "travel act" relates only to organized crime and is not applicable to labor activities.

"Their alleged acts are ones contemplated as part of a series of coercive tactics to achieve the negotiation of a union contract," Takasugi wrote in a 16-page opinion.

"There is no indication that Congress intended to extend the scope of a statute aimed at combatting organized criminal activity to encompass violence arising out of a lawful strike."

Takasugi held that the alleged use of explosive devices in this instance was not prosecutable under federal law. Again, he said, there is no indication that Congress intended to extend such prosecution into the labor field.

The judge dismissed five counts of embezzling union funds on the ground that the money was spent for a legitimate union purpose—organizing. The purpose was union advancement and not personal gain, he held.

Finally, Takasugi threw out a charge that the defendants conspired to violate the Racketeer Influenced and Corrupt Organization statute.

He ruled that not only did that statute not extend to labor violence, but also that there was no "labor racketeering in this case.

Attorneys who won the dismissals were W. Michael Mayock for Thordarson, Jan Lawrence Handzlik for Fry, Jerry Newton for Dunbar, John Resich for Salgado and Terry W. Bird for Wise.

[From the Valley News (Calif.), March 18, 1980]

Teamsters Freed of Rackets Charge

(By Ken Hoover)

A federal judge Monday dismissed indictments against five local Teamsters Union officials accused of racketeering in connection with labor strife at a Thousand Oaks moving company.

U.S. District Court Judge Robert M. Takasugi ruled that federal laws aimed at controlling organized crime do not cover violence during a lawful strike.

"We disagree with the decision and we expect to appeal," said Rodney Periman, the U.S. attorney handling the case.

A federal grand jury handed down indictments Nov. 20 against the five officials, charging them with a conspiracy of "fear, threats and violence, including arson and threats of arson" to force the Redman Moving and Storage Co. into recognizing the union.

The indictments concluded a 14-month investigation by a task force of the Los Angeles City Fire Department and the U.S. Bureau of Alcohol, Tobacco and Firearms.

The strike occurred between July and December 1978. During part of that time, Redman owner Earl Cozby said, he camped out at his business near the junction of the Ventura Freeway and Hampshire Road while Teamsters maintained a camp nearby.

Redman trucks were destroyed by arson in Oxnard, Van Nuys and Ridgefield, Conn.

Two of the accused officials were from Local 186, which covers Ventura and Santa Barbara counties. They are Martin Fry, 39, of Ojai, secretary-treasurer and Martin Salgado, 39, of Oxnard a trustee.

The other three were from Los Angeles Local 389. They are Charles Wise, 37 of Eagle Rock, president; Craig Dunbar, 28, of Hacienda Heights, business agent-organizer, and Sten Thordarson, 37, of Canoga Park, secretary-treasurer.

In ruling federal organized crime law did not apply to violence during a lawful strike, Takasugi relied on a 1973 decision by the U.S. Supreme Court.

"The court concluded that the state court was the proper forum for such a prosecution," Takasugi wrote in a 16-page opinion.

The judge said that while the statutes could be read to cover the types of offenses of which the five Teamsters were indicted, the language would have to be much more explicit to lead to the conclusion that Congress intended to put the federal government in the "business of policing the orderly conduct of strikes."

The judge used the same theory to strike down counts in the indictments accusing the defendants of embezzling union funds since union money allegedly was used to finance trips to Arizona and Connecticut and other expenses related to the fires.

Federal organized crime statutes do not include "violent means, even if in violation of state law used to achieve legitimate labor objectives," Takasugi concluded.

The judge's ruling came hours after an arson fire at Relocation Systems Inc., a Carson moving company in the midst of a strike by the Teamsters, the city Fire Department reported.

[From the Richmond (Va.) Times-Dispatch, April 24, 1981]

Ending Labor Violence

A remarkable decision of the U.S. Supreme Court in 1973 opened up a loophole in the federal criminal code's sanctions against extortion. Extortionate threats or actual commissions of violence instigated by labor unions during labor disputes were held exempt from federal prosecution so long as the unions were pursuing otherwise "legitimate labor objectives." Although businessmen, business corporations and other individuals and organizations remain liable to federal prosecution if they should engage in extortionate behavior, the court held that extortion by organized labor is a concern solely of state and local prosecutors and law enforcement officers.

The loophole will be closed if Senate Judiciary Committee Chairman Strom Thurmond has his way. "State and local authorities often are not equipped or strongly motivated to deal with the consequences of clashes between powerful interest groups within their communities," the senator said last month in introducing legislation to reinstate coverage of labor union extortion under the anti-extortion Hobbs Act of 1951. He declared further: "This is particularly true with labor disputes—a subject that has a long and almost pre-emptive federal involvement. Indeed, the political implications may be overwhelming to a local official who appears to take sides in a labor dispute by vigorous enforcement of criminal laws."

It is historically ironic, of course, for Strom Thurmond, who first won national attention as a champion of states' rights, to be promoting any extension of federal jurisdiction, but it is also an indication of how seriously the senator, still very much devoted to limited government, regards the scourge of labor union violence. That his perception is correct may be demonstrated through many ugly examples, with notable instances to be found now in the Appalachian coalfields.

Sen. Thurmond's description fits almost exactly the situation in Kentucky, where, during the current United Mine Workers' strike, a number of non-union coal operations have been seriously disrupted by violence. The Virginia-based United Coal Co. of Bristol, for instance, has been forced to shut down most of its Kentucky operations because of attacks on its trucks and drivers. Virginia has escaped such violence and disruption of free economic activity because Gov. John Dalton very re-

sponsibly ordered state police reinforcements into the coalfields. Kentucky officials, on the other hand, have refused to provide such additional policy protection as a gesture of their profession of "not taking sides."

A federal anti-extortion statute that covers violent disruption of commerce by *anyone*—businessmen, labor union agents or anyone else—ought to help prevent disgraceful situations such as the unchecked lawlessness now raging in the Kentucky coalfields. The Thurmond bill (S. 613) and its House companion (H.R. 450) are gaining support—we are especially happy to note that the principal House sponsor is Virginia's Rep. J. Kenneth Robinson and that Virginia Reps. Thomas J. Bliley, M. Caldwell Butler and William Whitehurst have signed on as co-sponsors. May their proposal pass promptly.